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PAPERS

RELATING TO

CONSULAR JURISDICTION IN THE LEVANT.

EXTRACT FROM REPORT OF THE SELECT COMMITTEE ON
CONSULAR ESTABLISHMENT.—1835.

“THAT the Civil and Criminal Jurisdiction of British Consuls in the Levant, seem to require to be better regulated and defined, and that Your Committee recommend this subject to the attention of Government, with the view of obtaining from Parliament the necessary powers for that purpose.”

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CONSULAR JURISDICTION.

I now lay before your Lordship a difficulty in point of jurisdiction, that may at any time involve a British consul in the Levant into very great responsibility.

2. The Act 6 Geo. IV, c. 33, s. 4, grants to His Majesty's consuls in the Levant the same authority that was exercised by the Levant Company's consuls, &c.

3. It appears from a letter of the solicitors of the late Levant Company, of the 8th June, 1812, a copy of which is herewith inclosed, that "though the consul may use his influence with a British subject to induce him to do justice to a foreigner, yet he cannot decide between them, because his doing so presumes a power to decide against the foreigner, which he has no right to do; nor can it be material he should have any such right, as the authorities of the country are open to the foreigner whose case will be decided upon in the proper courts."

4. Now, it is incorrect to say that the authorities of the country are open to the foreigner, such not being the case; and there is not a single Turkish authority in Egypt, that would not answer, upon the complaint of one European against another, that he has no power over them, and that he must apply to his consul for redress. It is therefore material that a consul should have power to decide when the question is within the limits of his competence.

5. This competence is thus established in this country. In any one case there is naturally a plaintiff and a defendant.

6. The consul of the defendant, when the complaint is laid before him, assembles two or four merchants or residents, named assessors, and decides upon the merits of the case. If the plaintiff is declared to have no grounds for complaint, he may be condemned by the court to the costs of the suit, but to the costs only; and such are the limits of the power which consuls have over subjects of other nations.

7. But in case the plaintiff is found to be indebted to the defendant instead of being his creditor, then the court absolves the defendant from the charge brought against him, leaving it to his option to attack the party before the competent court, to condemn him, that is, before his national consul; and from this it will appear that every European is thereby judged by his own countrymen.

8. But the privileges acquired by Europeans in the Levant go still further; and, generally speaking, unless the case is a very serious one, the government itself sends its own subjects, who have to complain of foreigners, to their respective consuls for justice; and it is generally understood that every European in Egypt, except when guilty of a capital crime on the person or property of an Ottoman subject, or against the State, lives under the laws of his country, and the exclusive jurisdiction of the consul of his nation.

9. The loss of such extensive and beneficial privileges that have been the work of centuries, would be considered as the greatest calamity by every European in the Levant; and your Lordship may easily conceive how much every one of them is interested in their maintenance, particularly in a country where the total want of written law renders every sentence the expression of the caprice of the magistrate who awards it, and where the Turkish magistrates, who are invariably selected among the religious people, are imbued with prejudice and hatred against the Christians.

10. It is certainly worthy of your Lordship's attention; and in placing this point of jurisdiction upon a legal footing, by granting to His Majesty's consuls the same authority which is exercised by foreign consuls, *videlicet*, to decide between two Europeans of different nations, always within the limits now in force by usage, as above described, your Lordship will have established the permanent security and happiness of His Majesty's subjects who reside in the dominions of the Grand Seigneur,—a benefit which would likewise be felt by the navigators resorting to the numerous ports of this empire.

11. It is, at the same time, well to inform your Lordship, that British consuls, feeling as they do the utmost necessity of their acting upon that principle, have invariably done so at their own peril; and your Lordship will easily conceive that in case they were to refuse justice to foreigners when complaining of an Englishman, it must at last induce the foreign consuls to deny justice to Englishmen complaining of their countrymen, until they meet with the reciprocity to which they feel they have a right on the part of the British authorities.

(2.)—REPORT from Messrs. Freshfield and Kaye, Solicitors to the Levant Company.

Sir,

London, June 8, 1812.

WE have given the best consideration in our power to the various questions you have submitted, which involve matters of deep importance, and to be answered fully would occupy much of the attention of the Company, and a reference to numerous authorities of miscellaneous classes, but as that would be less convenient to the Company, we shall state the short result as applicable to each point.

The questions you proposed may be reduced to the following; viz:—

1. The legal extent of the authority of the Company's consuls in Turkey over the persons and property of His Majesty's subjects.
2. The authority of the consuls of the King, or those appointed immediately by His Majesty's Government.
3. The construction to be put upon Mr. Morier's commission as consul-general.
4. The nature and extent of the Company's authority over their own officers, with a view to enforce obedience to their orders.

The first will be found the most important question, because it embraces every consideration applicable to the two succeeding questions, and in substance furnishes the answers to them. We shall, therefore, treat this question more fully on that account.

It does not appear that the term "consul" was known in England to designate a civil officer as connected with British interest previous to the reign of King Richard the Third. Until that period it was understood in its primary signification, and meant an earl, and its subsequent application to a person holding the appointment of a civil magistrate, was probably derived from the Romans; in that sense it was adopted by the Emperor Frederick of Germany, in 1162; and Richard the Third, in 1485, appointed Lorenzo Strozzi, a merchant of Florence, to be the consul of the English merchants at Pisa and the adjacent countries, to which appointment his Majesty was moved "by observing from the practice of other nations the advantage of having a magistrate appointed for settling disputes among them." It is, therefore, clear, that in the first appointment ever made by any power in this country, of a consul, the office of a judge formed a part of his duty, and seems to have been the principal object of his appointment; and accordingly the King is said to have "delegated to him (Strozzi) the power of hearing and summarily determining all disputes between English subjects in those parts, and doing all other things pertaining to the office of a consul."

In 1640, his late Majesty King Charles the First appointed a consul-general at Alicante, and his commission contained the following preamble:—

"Whereas we are given to understand how convenient and necessary it is for the good of our loving subjects trading to Alicante, to have some person of judgment and experience able to govern and direct them in their just and lawful occasions, to be placed and appointed as consul there."

By the articles of peace between the King of England and the Sultan of the Ottoman Empire, it is stipulated (article 16), that the Turks are not to intermeddle in differences between the English, but those differences are to be settled by their own ambassadors or consuls, according to their own rights and laws.

The Levant Company's charter (section 17) contains a power to appoint consuls in all places of the dominions, &c., of the Grand Seigneur, and other places within the Levant Seas; and that the consuls and vice-consuls so named "should have authority and power to govern all and singular merchants, being subjects of him (His Majesty), his heirs and successors, as well of the said Company, as others which were not of the said Company, and

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their factors, agents and servants trading in merchandize in the seignory, &c.; and to administer to them and every of them, full, speedy and upright justice in all their plaints, causes and contentions amongst them, begun and to begin in the said dominions, and to pacify, decide and determine all and all manner of questions, discords and strifes, in any the seignory, &c., moved and to be moved for the better government of the said merchants in the seignory," &c. The consuls are further to have full power to do and execute all things which should be by the Company appointed and presented according to the statutes, acts and ordinances of the Company.

Section 19 empowers the Company to make, ordain and establish statutes, laws, orders, constitutions and ordinances, as well for the government of the Company as of other British merchants engaged in the trade; and they are particularly authorized to ordain, limit, and provide such pains, punishments, and penalties, by imprisonment of body or by fines or amerciaments, or by all and every of them, to be extended upon and against all and every offender contrary to such statutes, &c., as to the said Company should seem requisite.

It is further provided (section 21), if any merchant should refuse to pay or should not pay the assessment which the Company were authorized to make, or should offend against the trade, privileges, &c., or against the statutes, ordinances, &c., or should refuse to pay the fines, penalties, &c., within this realm or elsewhere, "it should be lawful for the said Company and for the consuls and vice-consuls abroad, such obstinate offenders and ill-doers to chastise and correct, by imprisonment or otherwise, by fine, amerciamment, or other reasonable punishments, according to the quality of the offence, as by the said government, &c., should be ordered and adjudged."

From these authorities and other powers conferred by the charters, it appears to us, first, the consuls have power to hear and decide upon all differences between British merchants engaged in the trade; second, to carry their decisions into effect; third, to enforce obedience to any regulations the Company may make, and to punish the breach of them; fourth, the Company have authority to make regulations regarding every matter connected with their trade, not inconsistent with the charter.

Thus you will observe there is no want of power on the part of the consuls to do whatever the Company think proper to have done, and that it is of the utmost importance the Company should, in the shape of ordinances, &c., define the subject matter of their authority, and the way in which it is to be exercised: for, as the power of the consuls is altogether derivative, the Company cannot be too specific in their authority, so that whatever is done may become the act of the Company put in force by their consul.

It is scarcely necessary to state, that though the consul may use his influence with a British subject to induce him to do justice to a foreigner, yet he cannot decide between them, because his doing so presumes a power to decide against a foreigner, which he has no right to do, nor can it be material he should have any such right, as the authorities of the country are open to the foreigner, whose case will be decided upon in the proper courts. The case put by Mr. Werry in his letter to the Company, dated 3rd April, 1812, will be answered by applying this remark.

We have thus shown the extent of the authority of the consuls of the Levant Company, which, in few words, is to decide between one British subject and another, in such course as the Company shall authorize, and to enforce the due observance by British subjects, of the ordinances of the Company.

Upon the second question it is not necessary to say more than that we apprehend there can be no distinction between the consuls of the King and those of the Levant Company, the difference consists in the source of their appointment and not the nature of their office; the one is appointed by the King in a country to which all the subjects of His Majesty have an equal right to trade; the other is appointed by the Company, who, in consequence of a grant from the King, have acquired among other rights the power to make regulations in respect of a particular trade, which His Majesty would make as to trade in general.

The third question is in substance already answered; the meaning of Mr. Morier's commission is, that he is, to the utmost of his power, to compose and determine all differences. The extent of the power must depend upon the Company, by whom it is to be defined.

Upon the last question, namely, the power of the Company to enforce obedience to their orders, we need only refer you to the extracts already made from the charter, and to the immediately succeeding clauses; from these it appears the Company has full power to make laws for the government of the Company and the trade, and to enforce them by imprisonment or fine, or both, and the mode of levying the latter is pointed out, and all the civil authorities are enjoined to give effect to their measures; we therefore do not apprehend any difficulty can arise upon the subject.

We are, &c.,
(Signed) KAYE, FRESHFIELD, & KAYE.

(3).—The Levant Company to Consul-General Cartwright, at Constantinople.

Sir,

London, April 12, 1821.

WE now transmit to you some copies of the republication of our bye-laws, which are to be in force in Turkey on the 1st of July next.

2. We have been, for a considerable time past, engaged in the revisal, and have made such additions and alterations as, upon mature reflection, we have deemed best adapted to present circumstances.

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3. We consider the arrangement of the present edition so clear, and the language of each bye-law so plain and unequivocal, as to supersede the necessity for much explanatory comment. Yet our bye-laws are but general rules. Many occurrences not provided for will arise, and it must be left to the good sense of our officers to dispose of these occurrences properly.

4. On your zeal and discretion we have the firmest reliance. We know that our business will be well conducted at Constantinople, and we confidently expect that you will do all that depends upon you to cause it to be well conducted elsewhere.

5. We approve of your suggestion to take the Turkish tariff as the rule for our consular charges. You will perceive that we have adopted it. And we direct that our bye-laws to that effect be strictly but not vexatiously executed.

6. There can be no good reason for delay in the payment of consulage when the amount is ascertained. The 40th bye-law, expressed in the words of a clause of our charter, provides a severe penalty for default in that particular.

7. The chapter on avarias is entirely new modelled. We have thereby relieved ourselves from indefinite responsibilities, which we perhaps ought never to have incurred.

8. The 39th and 40th bye-laws are highly important; with the addition of the word consul-general to the first of them, they are both literal transcripts from the charter; by which it appears that there is a power inherent in the character of consul to govern British merchants, and to decide upon their disputes, in Turkey. This power being delegated by the Crown, not to us, but to the consuls elected by us, it follows that they, not we, are responsible for the manner in which it may be exercised.

9. With this notification we might be contented. But as we are anxious to remove difficulties from the way of our officers, and to assist them in the discharge of the delicate and important duty thus imposed upon them, we have thought fit to adopt the clause in question as our 39th bye-law, and we thus expound it:

The power which we confer upon our consuls to govern British merchants, and to decide their disputes, is confined to civil matters exclusively.

10. The proper course for the consul to pursue when required to act judicially, is this:—He is formally to cite the plaintiff and defendant to appear before him at a future convenient day, to be fixed by himself, for hearing their suit; and if an affidavit of the debt has been made by the plaintiff, he is to require sufficient bail of the defendant to secure his appearance, or in default of bail, and having good reason to suspect that the defendant intends to abscond in the interval, the consul may imprison him until the day of trial, and he may, of course, also imprison in execution of sentence. But in no other cases except in those distinctly provided for by the 40th bye-law, can any British subject be imprisoned under our authority.

11. The 42nd bye-law provides for appeals from consular decisions, gradually, to that of the consul-general. We have not carried them higher, because our power to direct ends there. You will, however, report all appeals to the ambassador, and submit to his Excellency's pleasure therein. As we hold our authority under the King, you are necessarily subordinate to his representative.

12. We are purposely silent in the bye-laws upon the subject of consular interference in criminal acts done by British subjects, because we are ignorant of there being any legal authority for such interference.

13. Our consuls, being forbidden to resort to the justice of the country, may occasionally be driven to the necessity of imprisoning turbulent seamen, and that necessity would no doubt be their justification to a certain extent; but now that they are also called upon frequently to take cognizance of serious crimes committed by licentious foreigners under British protection, the case takes a more grave and serious character; and we desire it to be distinctly understood that we renounce all responsibility upon the subject. We would advise our consuls to do nothing in criminal cases without precise orders in writing from the ambassador, and then to act only so far as may be indispensably necessary for the safety of society, and for the preservation of harmony with the Turkish government. This matter cannot remain long in its present uncertain state. We have reason to believe that the attention of His Majesty's Government has been called to it, and we doubt not that something effectual will be done.

We have, &c.,

(Signed)

The Governor and Company,

J. BOSANQUET, Deputy Governor.

J. T. DAUBUZ, Treasurer.

N. THOMSON.

W. TOMLINSON.

F. D. DE LA CHAUMETTE.

N. KERR.

A. SALTMARSH.

E. LEE.

T. BURGEN.

J. NICHOLS.

Z. LEVY.

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(4.)—*The Levant Company to their Consuls in the Levant.*

London, April 12, 1821.

Sir,
HAvING republished our bye-laws with such amendments as we have judged expedient, we forward to you herewith some copies for your immediate use.

You will observe that they are to be in force on the 1st of July next.
The 39th and 40th bye-laws declare the extent of the judicial authorities vested in our consuls.

The 42nd provides for appeals from their decisions to the consul-general, who will report thereon to the ambassador.

The consul-general will, from time to time, give you explanations upon this important subject: and we trust you will never forget, that consular decisions may be revised in the superior courts of England.

We are, &c.,
(Signed) *The Governor and Company,*
J. BOSANQUET, D.G. E. BRIGGS.
J. T. DAUBUZ, Treasurer. W. HORE.
N. THOMSON. J. W. BODDINGTON.
W. TOMLINSON. E. LEE.
F. D. DE LA CHAUMETTE. Z. LEVY.
N. KERR. J. NICHOLS.
A. SALTMARSH.

(5.)—*Extracts from the "Bye-Laws" of the late Levant Company, relating to Consuls and Cancelliers.*

CONSULS.

37. It appearing to the Company of great importance to establish due subordination among their officers abroad, they have for some time past appointed one of their consuls to be consul for the whole dominions of the Grand Seigneur and other places in which the Company have the privilege of trade, under the denomination of consul-general, but without in any manner superseding the several consuls in their respective districts, except as to Constantinople and its dependencies, for which the said consul-general is the exclusive consul.

38. The consul-general, consuls and vice-consuls, shall not act in those capacities for other nations; but they may protect strangers, provided their protection can be granted consistently with the good faith due to the Turkish Government, and without prejudice to British interests; provided also, that the protected pay consular according to the Company's rates, and all incidental expenses.

39. The said consul-general, consuls and vice-consuls, and every of them, shall have authority and power to govern all and singular the merchants, being British subjects, as well members of the Company, as others which are not of the said Company, and their factors, agents and servants trading in merchandize into the dominions of the Grand Seigneur, and other places in which the Company have the privilege to trade; and to administer to them, and every of them, full, speedy and upright justice in all their complaints, causes and contentions amongst them, begun, and to be begun in the said dominions and other places aforesaid; and to pacify, decide and determine all and all manner of questions, discords and strifes amongst them, in any of the dominions and places aforesaid, moved and to be moved, for the better government of the said merchants in the dominions and places aforesaid, for the time being.

40. If any British subjects, trading or residing in any port of the Company's privileges or government beyond the seas, shall at any time hereafter, refuse to account with their principals within six months after an account shall be required, and notice thereof given, or to pay the Company's duties, and shall in any matter or thing, decline the justice of the English ambassador, or agent, or resident there, or of the consuls or vice-consuls appointed by the Company, and shall appeal from them, or any of them, to any judicatory court of justice belonging to the Grand Seigneur, or any foreign prince, potentate or magistrate beyond the seas; then, in every such case, the ambassador, consuls and vice-consuls, and every of them, shall have power and authority from time to time, so often as they or any of them shall think expedient, to send over in safe custody such persons, being British subjects, not being duly and lawfully qualified as a public ambassador or agent, employed by His Majesty, his heirs or successors, to the end that such offenders, being brought over unto this country, they may receive justice according to their several cases and demerits.

41. The preceding article to be construed without prejudice to the power of decision conferred by the charter granted by his late Majesty King Charles II, bearing date the 2nd day of April in the 13th year of his reign; and also by article 39, upon consuls and others to decide in all controversies, and the right of such consuls and others to enforce by all necessary measures the powers so conferred. And in case the claimant, together with the factor or other alleged debtor, shall prefer to have their differences settled in

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England, it shall be competent to the consul-general, or consul, or vice-consul, to take bond from such factor or other alleged debtor, and two other persons approved of by such consul, that the said factor or other supposed debtor will immediately plead to, and abide by the result of any suit at law, or in equity, that may be brought by the claimant against him in the United Kingdom.

42. The powers contained or referred to in the before-mentioned articles, Nos. 39, 40, and 41, are to be put in force in Constantinople and its dependencies by the consul-general only, and in other places by the resident consul in his proper district; and no vice-consul shall presume to put the same in force, except in districts where there shall be no resident consul, unless by the express authority of the consul-general, or the consul for such district. And in any cases in which the authorities aforesaid, or any or either of them, shall be carried into effect by the vice-consul, it shall be his duty to report the whole of his proceedings to the consul residing within the district, or if there shall be no such resident consul, then to the consul-general; and in like manner, the proceedings of all consuls under the authority of the said articles 39, 40, and 41, shall be reported by them respectively to the consul-general; and it shall be competent to such consul-general or consul (as the case may be), upon appeal by any party conceiving himself or herself aggrieved by such proceedings, or the determination of such consul or vice-consul, or without such appeal, to examine and review the same, and to confirm, revoke, or alter the whole or any part thereof, as justice may require.

43. The consul-general and the consuls, at the request of the majority of the factors at their several stations, in case of disability or misdemeanor on the part of any cancellier, dragoman, giovane di lingue, or other subordinate officer, may suspend him from his office, and substitute a competent person, until the Company's pleasure be known; and if the cause of such suspension shall have been referred to the Company, the person suspended cannot be reinstated but by their order. In the event of the death of any subordinate officer, the consul-general or consul, with the consent of the majority of the respective factories, shall appoint others until the Company's pleasure be known.

CANCELLIERS.

66. CANCELLIERS, upon their entrance into office, shall be duly sworn to perform their several duties; and they shall not be concerned in trade.

67. Cancelliers shall take minutes of and register all transactions of assemblies of factories. They shall register the Company's orders in a book, solely for that purpose. They shall receive in deposit and register all wills, contracts and other documents of importance, in the manner required by the persons tendering such documents. They shall not, upon any pretence, refuse to enter any writing; nor shall they alter the minutes of any passed assembly of a factory, nor suffer the same to be altered.

68. All sums of money deposited in the cancelleries of Constantinople and Smyrna, are to be paid immediately to the Company's treasurers, who are to hold the same until the matters for which such deposits were made, shall be adjusted. Accounts of the sums deposited, and upon what occasion, also to whom, and by whose orders they were retained, shall be registered in the cancelleria, and copies of the same transmitted to the Company. But the Company will not be responsible for the loss of money or other property so deposited, resulting from any accident whatsoever, other than from the wilful neglect or malfeasance of their officer or officers. Nor will the Company be responsible in any case for money deposited, unless notice in writing shall be given to the Company's treasurer at Constantinople or Smyrna (as the case may be), by the person making such deposit, within fourteen days after such deposit, stating the particulars of the sums paid, and of the purpose for which the deposit shall have been made.

(6.)—*Extract from a REPORT from His Majesty's Consul-General at Constantinople, dated October, 1825.*

CONSULAR FUNCTIONS.

THE Porte having granted to the ministers and consuls of the several nations with which they have treaties, the right of jurisdiction in all cases of difference between the subjects of their respective governments, the official duties of consuls in the Levant are thereby rendered more extensive and important than those of consuls in other countries.

2. They have to exercise a police over the crews of vessels of their flag, and also over the subjects of their government who may be established and living within their districts.

3. They have to settle all differences in commercial and other matters which may arise between the subjects of their government, not only by conciliatory adjustment, but often by written decisions or sentences, which they are also sometimes required to enforce the execution of.

4. The capitulations give them authority both in civil and criminal matters.

5. It is desirable that the British consuls had the nature and extent of that authority defined to them, and that regulations were made for their guidance in judicial proceedings.

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6. The Levant Company, no doubt, considered that they were only competent to make regulations consistent with their charters, and they therefore confined themselves in their bye-laws to regulations for their own particular establishment, and for the mode of appeal and execution of consular decisions in differences between merchants.

7. The Company ordained by the 42d bye-law, that appeals should be made to the consul-general, because, as they were no longer in connexion with His Majesty's embassy, their power to direct did not go higher.

8. But, on every consideration the final appeal should be to His Majesty's representative at the Porte.

9. No vice-consul or agent should be allowed to execute a decision, without the express authority of the consul of his district, to whom he should report his proceedings.

10. In cases of appeals from decisions of the consuls, they might be authorized to exact from the parties a provisional execution of the sentences, either by the deposit of the amount awarded, or by satisfactory security.

11. In such appeals there are two modes of proceeding to be considered.

12. The appeal may be first made to the consul-general, who alone, or with the assistance of assessors to be chosen by himself, would decide therein. A short term of days might be allowed to the parties, to acknowledge or object to his decision. In the latter case the consul-general would lay the case before His Majesty's ambassador or minister, together with the objections of the parties, and the ambassador or minister would decide finally thereon.

13. Or, the appeal may be transmitted to the consul-general, to be by him submitted to His Majesty's ambassador or minister. The consul-general would be the official assessor on such occasions: and he would, with other assessors, if required, assist the ambassador or minister in deciding upon it.

The latter mode is attended with less delay, but the former provides perhaps more effectually for the obtaining of a satisfactory decision, and would naturally be adopted in cases originating in the particular consulate of Constantinople, in order to provide for a revision of the consul-general's decision in the first instance.

These suggestions are made on the assumption that consular courts in the Levant are to be regarded as local tribunals, from which there would be no appeal to courts in England.

But the French and Russian governments have established courts of appeal in those countries for consular decisions; and the Russian government has by a late decree declared, that foreign subjects, not Ottomans, resident in Turkey, are, in their differences with Russian subjects, when the latter are defendants, subject to that mode of appeal.

French subjects resident in Turkey consider that they possess the same privilege, and it would appear that the French embassy are inclined to support their pretensions, since it has insisted upon trying causes between French and other foreign subjects, not Ottomans, according to the forms prescribed by the French ordinances, and not by mixed commissions, as formerly, which were appointed by both the protecting authorities of the parties in dispute.

The Austrian consular offices in Turkey are regarded as local tribunals, and the Austrian government has declared that the supreme court of appeal in Austria cannot take cognizance of their decisions, being incompetent to decide upon circumstances connected with the local customs of a foreign country.

The final appeal is to the imperial internuncio at the Porte. Mixed commissions are also in disuse with the Austrian mission.

The capitulations granted by the Porte, allow to each government jurisdiction in the affairs of its own subjects residing in Turkey.

The French and Russian are the only capitulations which contain any reference to the mode of settling differences between subjects of different governments.

The 52d article of the French capitulations, refers the consuls and the parties in such differences, to their ambassador.

The mixed commissions formerly resorted to on such occasions, are analogous in principle to the spirit of that article.

If mixed commissions are not now so generally resorted to as they were formerly, it is also certain that the legations are not bound to the observance of any other particular mode of proceeding.

It is desirable that a general mode of proceeding in such cases be established, either by the legations or by their governments.

The 58th article of the Russian treaty appears to leave the final decision in differences between Russian and foreign subjects, to the Russian minister at the Porte.

But it is to be considered, if the Porte could grant such a privilege to one government, without the consent of the other, whose subjects are affected by it, and who are thereby exposed to the possible inconvenience of having to seek ultimate redress by an appeal to a distant tribunal in Russia.

Should the British Government consider it expedient to establish a court of appeal for consular decisions, the mode of appeal suggested in the memorandum might still remain available to the parties in dispute, on their consenting to renounce the appeal to the court in England.

(Signed) JOHN CARTWRIGHT.

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(7).—LETTER from the Under Secretary of State to His Majesty's Law Officers.

Gentlemen,

Foreign Office, October 20, 1825.

In reference to the Act of the 6 Geo. 4, c. 33, by which the laws respecting the late Levant Company were repealed, and the possessions and property of that Company transferred to His Majesty's Government, I am directed by Mr. Secretary Canning to request that you will take into your early consideration, and report to Mr. Canning your opinion, whether His Majesty's ambassador and consuls in the Ottoman dominions can legally exercise the authority and jurisdiction over British subjects resident therein, which was entrusted to the Levant Company and their consuls by the late charter; as well as the authority with which the British ambassador and consuls are vested by the capitulations and treaties between Great Britain and the Porte; and should you be of opinion that they cannot legally exercise the same, I am to request that you will acquaint Mr. Canning whether it would be expedient that any, and if any, what measures should be adopted to enable His Majesty's ambassador and consuls to exercise over the British and Ionian subjects in the Levant a proper authority and jurisdiction.

For your more easy consideration of this subject, I enclose copies of the documents above mentioned, together with a copy of the bye-laws of the late Company, and of their proceedings respecting the surrender of their charter to the Crown.

His Majesty's Advocate, Attorney,
and Solicitor-General.

I am, &c.,

(Signed) JOSEPH PLANTA.

(8).—REPORT from His Majesty's Law Officers to the Right Honourable Mr. Secretary Canning, &c., &c., &c.

Sir,

Doctors' Commons, September 23, 1826.

We are honoured with your commands, signified in Mr. Planta's letter of the 20th of October, 1825, in reference to the Act of the 6 Geo. 4, c. 33, by which the laws respecting the late Levant Company were repealed, and the possessions and property of that Company transferred to His Majesty's Government; and you are pleased to direct, that we would take the same into our consideration, and report to you our opinion, whether His Majesty's ambassador and consuls in the Ottoman dominions can legally exercise the authority and jurisdiction over British subjects resident therein, which was entrusted to the Levant Company and their consuls by the late charter, as well as the authority with which the British ambassador and consuls are vested by the capitulations and treaties between Great Britain and the Porte; and should we be of opinion that they cannot exercise the same, you are further pleased to request that we would acquaint you whether it would be expedient that any, and if any, what measures should be adopted to enable His Majesty's ambassador and consuls to exercise over the British and Ionian subjects in the Levant a proper authority and jurisdiction.

In obedience to your commands, we have the honour to report, that we are of opinion that all such rights and duties of jurisdiction and authority over His Majesty's subjects resorting to the ports of the Levant for trade, or otherwise, as were legally exercised and performed by the consuls or other officers appointed by the Levant Company, before the surrender of their charters, may now be legally exercised and performed by ambassadors, consuls or officers appointed by His Majesty under the operation of section 4 of the statute 6 Geo. 4, c. 33. We must observe, however, that upon reference to the charters and regulations of the Levant Company, a considerable doubt may arise whether some of the powers which seem to have been committed to their consuls, could be legally exercised, and particularly the general powers of fine and imprisonment, mentioned in 17, 19 and 20 sections of the charter of Charles II, and the power in certain cases of sending back His Majesty's subjects to this country, which is mentioned in No. 40 of the bye-laws. We, therefore, submit, that if it be thought expedient by His Majesty's Government that such powers, as above alluded to, should be exercised by the consuls or officers to be appointed by His Majesty, it would be proper to resort to the Legislature on the subject.

We have the honour to be, &c.,

(Signed)

CHRISTOPHER ROBINSON.
CHARLES WETHERELL.
N. C. TINDAL.

(9).—Provisional Instructions given by His Majesty's Consul-General at Constantinople, to His Majesty's Consul at Smyrna, on the nature of the Jurisdiction which he is to exercise in Judicial Proceedings.

1. As the Right Honourable the Earl of Aberdeen's despatch, No. 1, of the 25th May last, and the set of general instructions addressed to His Majesty's consuls which accompanied it, contain ample directions for Mr. Brant's guidance in the general duties of his office, I consider that it only remains for me to draw out instructions on the nature of the jurisdiction which he has to exercise over His Majesty's subjects, and respecting the forms to be observed by him on judicial proceedings.

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2. It is known to Mr. Brant that the Grand Seignor having granted to the ministers and consuls of the several nations with which the Porte has treaties, the right of jurisdiction in all cases of differences between the subjects of their respective governments, the judicial duties of British consuls are consequently more extensive in Turkey than they are in other countries.

3. They derive authority from the capitulations, both in civil and criminal matters; and His Majesty's Government will most likely hereafter cause the nature of that authority to be particularly defined to the consuls, and establish regulations for their observance in judicial matters.

4. Mr. Brant's attention to the following observations and instructions will, I trust, afford him for the present sufficient assistance in the discharge of his judicial duties, until he receive final orders from home for his permanent guidance.

5. Mr. Brant may undoubtedly consider that the authority of the King's consuls in the Levant is equal to that which they enjoyed under the charters and bye-laws of the late Levant Company, with the exception, perhaps, of the power conferred in the 40th bye-law, of sending British subjects back to England in certain cases, and I would advise him, on no occasion, to resort to such a measure, which, moreover, is unnecessary, because he possesses sufficient power to enforce obedience to his jurisdiction from any of His Majesty's subjects in his district, who should attempt to decline it, by appealing to a court of justice of the Grand Seignor.

6. Mr. Brant's interference in commercial differences will not only be called for, in cases in which both parties are British subjects, and consequently both are amenable to his jurisdiction, but also on occasions wherein one party, either claimant or defendant, may be the subject of another Christian power, possessing equal privileges with ourselves, or of the Ottoman Government, whose differences with the subjects of other Governments should more properly be carried before the local tribunals.

7. I will first consider the consular duties in cases wherein the parties are British.

8. The consuls under the late Levant Company were bound by their articles of agreement to administer speedy and impartial justice in all differences submitted to them, and it will, of course, be Mr. Brant's duty to decide in all cases that may come before him in as short a time as he conveniently can do so, with due attention to the circumstances of the affair.

9. The course for him to pursue, when all attempts to settle amicably having failed, he is required to act judicially, is the following:—

10. He will formally cite the plaintiff and defendant to appear before him at a future convenient day, to be fixed by himself; and he will then hear and decide upon their differences by a written sentence, in which he will state the considerations which have guided him in his decision; and more particularly when they have reference to any established usage of trade peculiar to his place, or not generally observed elsewhere.

11. He will then cause the sentence to be communicated by copy to the parties.

12. It has been customary at Smyrna, for the consul to have the assistance of assessors at his judicial sittings; but Mr. Brant will consider that, though the practice be proper and equitable, yet it is not absolutely necessary for him to choose assessors; and that as the judicial authority is vested in him solely, and that they are not affected by any responsibility, so he, when he is attended by assessors, may decide according to his own opinion and conviction, though they may differ with him therein: but they should not be prevented from signing, in the sentence, their dissent from the substance of it.

13. I do not know that Mr. Brant can officially require the attendance of our merchants to act with him as assessors, without previously obtaining their consent, as is practised in some foreign consulates, where the ordinances of their governments authorize a summons to that effect. Considering the nature of the duty they are called upon to assist at, it would, I think, be desirable that their attendance were rather voluntary on their part than the effect of a requisition. But if Mr. Brant should experience any inconvenience from the unwillingness of the merchants to assist him, His Majesty's Government might, perhaps, be pleased to authorize him to require their attendance.

14. After communication of the sentence, Mr. Brant may, if required thereto, arrest the debtor in execution of it; and, indeed, before the hearing the suit, if the plaintiff make an affidavit of the debt, and the defendant give not, at his requisition, sufficient bail to secure his appearance, Mr. Brant having good reason to suppose that he intends to abscond in the interval, may imprison him until the day of trial.

15. The 42nd bye-law of the late Levant Company provided for the appeal from consular decisions to that of the consul-general, and that course Mr. Brant will continue to hold in observance; but the consul-general need not, and, perhaps, should not, receive the appeal, if the sentence, in first instance, of the consul or vice-consul has not been provisionally executed, either by a deposit of the amount of the debt, by satisfactory security to the plaintiff for the amount, or by the arrest of the debtor.

16. The latter measure need not of course be resorted to when either of the other modes can be adopted; and in case the parties agree to make a voluntary deposit in the hands of a third person, Mr. Brant should not oppose it, nor order the deposit to be made either in his own office or elsewhere, when the plaintiff is satisfied with a security offered to him, though he may require that the surety and depositary may be persons under his own jurisdiction.

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17. The Levant Company did not carry the appeal higher than the consul-general, because, after their connexion with His Majesty's embassy had ceased, their power to direct did not go higher.

18. But if the consul-general's decision should, in any part thereof, be objected to by the parties in the appeal, his Excellency the ambassador will examine their objections, and reverse or alter whatever may be found defective in the consul-general's reversal of the sentence.

19. In cases of differences between British subjects and those of other Christian governments, when the British party is defendant, the suit will lay before Mr. Brant. His proceedings in it will be nearly similar to those in British suits, and the course of appeal will be precisely the same.

20. If Mr. Brant should have to try the suit with assessors, it would be equitable to choose a part of their number from among persons who might be agreeable to, or recommended by, the protecting authority of the claimant; and that mode of selecting them should undoubtedly be observed, when the other authority is disposed to adopt it, in trying the suits of British claimants.

21. It has happened, and inconvenience has resulted from it, that differences have been brought before the consuls which, in consequence of the various jurisdictions existing in the Levant, contained matter for cross actions; and the consul having condemned the foreign plaintiff in what attached to him, the consul of his nation has refused to execute the sentence.

22. When such cases occur, Mr. Brant will do well to carry his decision no further than to absolving the British defendant from what may appear to have been unjustly claimed from him, and then refer him for his claim on the foreigner to the tribunal of the latter.

23. In mixed suits, when the British party is plaintiff, it will be Mr. Brant's duty to cause his representations to be transmitted promptly to the consulate which has to take cognizance of his claim, and to support them by his own remonstrances when he complains with reason of irregularity in its proceedings towards him.

24. The consular jurisdictions in the Levant have not a common mode of appeal, so that the merchants of Smyrna should be warned that, in their claims upon French, Sardinian, and Russian subjects, they may have to carry their final appeals to courts in those countries.

25. I have understood that the consul has occasionally decided, at Smyrna, in suits between British and Ottoman subjects, in the manner observed when both parties are British. The practice is irregular, for the consul has no jurisdiction in such cases, and the proceeding might be useless altogether if the Ottoman party, not being satisfied with the sentence, were to refuse to abide by it, for the consul has no means of enforcing his observance of it.

26. It would be preferable not to decide in those cases by written sentences, or in strict judicial form; but to hear the parties, and endeavour to accommodate their differences, unless indeed the Ottoman authority agree to or intervene in the application to Mr. Brant's jurisdiction, or that the practice alluded to is general at Smyrna, and not peculiar to the British consulate, and has been so long established that a departure from it now might be attended with much inconvenience.

26½. The late Levant Company have never noticed in their bye-laws the subject of consular interference in criminal matters, nor has His Majesty's Government yet communicated to the consuls any legal authority for their interference in criminal acts done by British subjects.

27. When such acts are committed against the King's subjects, as the Turkish government has renounced its jurisdiction therein, and has granted it to the ambassador and consuls, the local authorities might refuse to interfere, and the guilty might thereby escape punishment.

28. This matter will no doubt be thought deserving of the attention of Government, and we may hope that something effectual will be done in it.

29. In the mean time, as the consuls are forbidden to resort to the justice of the country, they will occasionally be under the necessity of imprisoning turbulent seamen and others, and that necessity would no doubt be their justification to a certain extent.

30. Considering to what classes those of His Majesty's subjects belong who settle or travel in the Levant, there is reason to hope that the consuls will not be called upon to take cognizance of any grave crimes committed by them, but it is not so with regard to foreigners under British protection.

31. When cases of the latter description occur, it may be necessary for the safety of society, and for the preservation of good harmony with the Turkish government, that Mr. Brant should interfere; and he would then do well to secure the persons of the delinquents, and report the circumstances of the particular case to me, in order that I may obtain instructions from His Majesty's ambassador for his further proceedings.

32. Mr. Brant should bear in mind that the citizens of the Ionian States are entitled to his protection in an equal degree with the King's own subjects, and that they are by treaty entitled to the same privileges in this country.

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33. By the navigation laws of those states, foreign-built vessels becoming the property of their citizens are entitled to naturalization; and foreign vessels are frequently purchased in the Levant by Ionians, with which they proceed to their islands to procure the necessary documents for their navigation.

34. In such cases, when application is made to Mr. Brant for a pass, he may grant it for the voyage to the Ionian Islands, on receiving satisfactory security for a sum never less than half the amount of the value of the vessel, that she will proceed direct to the islands for the purpose stated, unless he should see cause for granting permission to the master of such vessel to touch at any port in his course, or not deviating much from it. Mr. Brant is in no other circumstances competent to give passes to vessels not otherwise authorized to navigate; and I recommend this instruction to his particular attention, for I have to regret, that although circular communications to the same effect have been addressed to the consuls in the Levant, they have not been generally attended to.

It is impossible to provide for unforeseen occurrences, but should Mr. Brant find himself embarrassed by circumstances of a novel nature, if he will report them to me, I will not fail to attend to his representations and to lay them before His Majesty's embassy if necessary.

(Signed) JOHN CARTWRIGHT.

(10.)—REPORT from the King's Advocate to the Right Honourable the Earl of Aberdeen.

My Lord,

Doctors' Commons, April 30, 1830.

I AM honoured with your Lordship's commands, signified in Mr. Backhouse's letter of the 22nd instant, with reference to my report of the 3rd, on the provisional instructions which His Majesty's consul-general at Constantinople addressed to His Majesty's consul at Smyrna, and transmitting the draft of a letter to Mr. Consul-General Cartwright, which your Lordship has caused to be prepared in conformity with my report above referred to. And your Lordship is pleased to request that I would take the same into consideration, and acquaint your Lordship, more particularly with reference to the last paragraph, respecting the question of consular jurisdiction in criminal cases in the Levant, whether it appears to me to be right and proper.

In obedience to your Lordship's commands, I have the honour to report, that I have perused the draft of the letter proposed to be addressed to Mr. Consul-General Cartwright, and am humbly of opinion that, so far as regards the exercise of jurisdiction by His Majesty's consuls in civil causes, between British subjects in the Ottoman dominions, it is perfectly correct and proper; but I humbly submit to your Lordship's consideration, whether it may not be expedient to omit, altogether, the latter part of the letter, which applies to consular jurisdiction in criminal cases, and to leave the matter in its present state. Mr. Cartwright observes, that the Levant Company had never noticed in their bye-laws the subject of consular "interference in criminal matters," from which I am led to infer, either that their consuls did not exercise jurisdiction therein, or that no inconvenience had been experienced in the exercise of it, from the want of instructions; and I further humbly submit, whether, if any additional sanction should be thought necessary, it will not be advisable to procure an Act of Parliament to be passed, by which the powers of His Majesty's ambassadors and consuls, and the extent of their jurisdiction, may be defined, as I entertain considerable doubts, whether any delegated authority of the Turkish government would be sufficient to protect them from being held responsible for any judicial acts done under it.

I have, &c.,
(Signed) HERBERT JENNER.

(11.)—Extract of a Letter from Colonel Campbell, His Majesty's Agent and Consul-General in Egypt, dated Alexandria, August 9, 1834.

"We are much in want here of a consular code, by which our several duties and responsibilities would be clearly defined, as well as our judicial powers, &c. Might I presume to recommend the adoption of some code similar to that of France for its consuls, &c., in the Levant, wherein every possible contingency seems provided for."

(12.)—REPORT of the King's Advocate to the Right Honourable Viscount Palmerston.

My Lord,

Doctors' Commons, October 29, 1834.

I AM honoured with your Lordship's command, signified in Mr. Backhouse's letter of the 20th instant, stating that he was directed to transmit to me an extract of a report from His Majesty's agent and consul-general in Egypt, upon the subject of the jurisdiction over British subjects exercised by British consuls in the Levant.

Mr. Backhouse observes, that Colonel Campbell submits the expediency of instructions being furnished to those consuls, defining in some degree the extent of the power which they may consider themselves authorized to exercise in investigating and deciding upon matters wherein His Majesty's subjects are personally concerned, and of which the

tribunals of the country are not willing to take cognizance; the course to be taken by them on such occasions, being always in accordance with the established custom in the Levant, and consistent with that pursued by the consuls of other nations in deciding disputes, wherein a British subject may be the plaintiff, and a subject of their nation the defendant.

Mr. Backhouse incloses copies of various papers relating to this subject, among which is a letter from the solicitor to the late Levant Company, dated in 1812, and a copy of the circular letter addressed by the Levant Company to their consuls, containing directions for the guidance of their conduct in this respect; also a copy of the instructions from His Majesty's consul-general at Constantinople to His Majesty's consul at Smyrna, relating to the forms to be observed by him in judicial proceedings in accordance with the usual practice in Turkey, and requesting that I would take these papers into consideration, and report to your Lordship my opinion as to the extent to which His Majesty's consuls in the Levant can properly exercise the important privileges in respect to jurisdiction which are delegated to them by the Turkish authorities; and as to the nature of the instructions which it may be expedient to communicate to those consuls for their guidance in this respect, with reference more especially to the contingency adverted to in the concluding paragraph of the report from Colonel Campbell.

In obedience to your Lordship's commands, I have the honour to report that I have perused the several papers transmitted to me, and am of opinion that the British consuls in the Levant have, in addition to the ordinary powers of other consuls, jurisdiction in all cases of a civil nature, where the parties are respectively British subjects: this is expressly stipulated in the 16th Article of the Capitulations with the Turkish government. It appears to have been exercised by the consuls of the Levant Company before the revocation of their charter, and under the operation of the 4th section of the statute 6th Geo. 4, may now be exercised by the consuls appointed by His Majesty.

With respect to suits of a civil nature, between British subjects and foreigners, I am clearly of opinion, that where the British subject is plaintiff, and the foreigner defendant, the British consul can have no jurisdiction; and, highly desirable as it may be, and as I conceive it is, under the circumstances, and for the reasons stated by Colonel Campbell, that the British consul should have jurisdiction in cases where the foreigner is plaintiff and the British subject defendant, I entertain great doubts whether the British consul has a strict legal right to adjudicate between them. The power is expressly disclaimed by the Levant Company for their consuls in the document of the 8th November, 1812, referred to by Colonel Campbell. It does not appear to have been exercised, whether legally or otherwise, by the consuls of the Company, and therefore could not have devolved upon the consuls of His Majesty, under the statute before mentioned. Under these circumstances, I humbly submit to your Lordship that it would be proper to resort to the legislature on the subject, and that it would be inexpedient to send out further instructions to the consuls until the statute shall have passed.

If His Majesty's Government should deem it expedient to comply with the desire expressed by Colonel Campbell, in his despatch, dated Alexandria, 1834, for a consular code of the nature therein described, I humbly submit to your Lordship that the most advisable mode of proceeding would be, that a short Act should be passed, enabling His Majesty, by an order or orders in council, to frame a code, or to make rules and regulations for the exercise of consular jurisdiction in the Levant.

Such code or rules and regulations should be drawn up with the assistance of some person or persons conversant with the affairs of the Levant, and should be perused and carefully settled by the law officers of the Crown.

If it is the intention of His Majesty's Government to confer extensive jurisdiction in criminal matters on the British consuls in the Levant, I am humbly of opinion that it cannot safely be done except by legislative enactment.

I am also honoured with Mr. Backhouse's note, dated the 25th instant, transmitting the extract of a further despatch from His Majesty's consul-general at Constantinople, relating to the above subject.

I have the honour to report, that the extract from the despatch of the consul-general at Constantinople, dated October, 1825, does not in any material respect alter the view which I have felt it my duty to take of this subject, although it contains suggestions which may be useful in drawing up the proposed code or rules and regulations for the exercise of consular power in the Levant.

I have, &c.,
(Signed) JOHN DODSON.

(13.)—INSTRUCTIONS to His Majesty's Consuls in the Levant, dated Foreign Office, December 30, 1834.

Sir,

His Majesty's Government having under consideration the propriety of presenting to Parliament in the ensuing Session, a Bill to enable His Majesty to issue such orders as may be deemed necessary for the regulation of the proceedings in the courts held by His Majesty's consuls in the Levant, and for defining the jurisdiction of those tribunals, I am directed by the Duke of Wellington to instruct you to transmit to this office, with all convenient speed, such suggestions as may occur to you on the subject; in order that His Majesty's Government may have the benefit of your practical experience, in framing any new regulations which may appear expedient, should Parliament consent to confer the necessary powers on His Majesty.

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It may, perhaps, be most convenient, that you should explain the practice now observed in your consulate, and point out what appear to you to be the defects incidental to it, and the remedies most calculated in your judgment to remove them.

You will understand the present instruction to apply to your proceedings in criminal as well as to those in civil cases; and with regard to the former, you will constantly bear in mind the paramount importance of interfering, as little as possible, with the rights and liberties of His Majesty's subjects, including in this denomination the inhabitants of the Ionian Islands, who are under the protection of the British Crown.

(Signed) JOHN BIDWELL.

(14.)—LETTER from the Solicitor to the Treasury to J. Backhouse, Esq.

Sir,

Lincoln's Inn, March 24, 1835.

THE Lords of His Majesty's Treasury having been pleased to transmit to me, for my information and guidance in preparing a Bill for establishing the power and jurisdiction to be exercised by His Majesty's consuls in the Levant, I have prepared a Bill for the purpose, which has been submitted to, and approved of by the law officers; and I beg permission to enclose a copy, and to call your attention to the marginal observation and opinion of the law officers, at the same time returning the papers transmitted to me from the Treasury.

I am, &c.,
(Signed) GEORGE MAULE.

(15.)—Draft of a Bill to enable His Majesty to make Regulations for the better defining and establishing the Powers and Jurisdiction of His Majesty's Consuls in the Levant. [Query. Whether this term is sufficiently explicit.]

WHEREAS it is expedient for the protection of His Majesty's subjects resident at, or resorting to the different ports and places in the Levant, [we recommend after the word "Levant," that the boundaries, limits or description of places should be inserted, within which the Act is to operate.—J.D., F.P., W.W.F.] as well as of His Majesty's consuls or other officers appointed, or to be appointed by His Majesty for the protection of the trade of His Majesty's subjects in the said ports and places, that provision should be made for defining and establishing the authority of the said consuls and other officers: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by authority of the same, that it shall and may be lawful for His Majesty from time to time, by any order or orders of His Majesty in council, to make and issue any directions and regulations, touching and concerning the rights and duties, jurisdiction and authority over His Majesty's subjects, residing at or resorting to the ports or other places of the Levant, to be exercised and performed by His Majesty's consuls or other officers, appointed or to be appointed by His Majesty for the protection of the trade of His Majesty's subjects in the ports and places before mentioned, and the said consuls and other officers are hereby authorized and required to obey and enforce the said regulations and directions, and the same shall be effectual and binding upon all subjects of His Majesty residing at or resorting to the said ports and places, for the purposes of trade or otherwise.

And be it further enacted, that if any suit or action shall be brought against any person or persons for anything done in pursuance of this Act, or of any orders or regulations made by virtue thereof, then and in every such case, such action or suit shall be commenced or prosecuted within six months after the fact committed, and not afterwards, except where the cause of action shall have arisen in any place not within the jurisdiction of any of His Majesty's courts having civil jurisdiction, and then within six months after the plaintiff or plaintiffs, defendant or defendants, shall have been within the jurisdiction of any such court, and the same and every such action or suit shall be brought in the county or place where the cause of action shall have arisen, and not elsewhere, except where the cause of action shall have arisen in any place not within the jurisdiction of any of His Majesty's courts having civil jurisdiction; and the defendant or defendants shall be entitled to the like notice, and shall have the like privilege of tendering amends to the plaintiff or plaintiffs, or their agent or attorney, as is provided in actions brought against any justice of the peace, for acts done in the execution of his office, by an Act passed in the 24th year of the reign of King George II., intituled "An Act for the rendering justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants;" and the defendant or defendants, in every such action or suit may plead the general issue, and give the special matter in evidence, and if the matter or thing complained of shall appear to have been done under the authority and in execution of this Act, or of any orders or regulations made by virtue thereof, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought in and laid in any other county or place than the same ought to have been brought or laid in, as aforesaid, then the jury shall find for the defendant or defendants; and if the plaintiff or plaintiffs shall become nonsuit, or discontinue any action after the defendant or defendants shall have appeared, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be taken against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the recovery thereof, as any defendant or defendants hath or have in any cases of law.

See 6 Geo. 4. c. 33,
s. 44.

See 3 & 4 Will. 4,
c. 93, s. 2.

SELECT COMMITTEE ON CONSULAR ESTABLISHMENT.

We approve of this draft as altered, but if the object of the Act be to give to consuls a criminal jurisdiction, we submit that it might be proper to present the directions and regulations to Parliament for a certain time before they should be binding and effectual.

Temple, March 20, 1835.

(Signed)

J. DODSON.
FREDERICK POLLOCK.
W. W. FOLLETT.

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(16.)—Vice-Consul Brant's Remarks on the Jurisdiction of British Consuls in the Levant.

THERE exists considerable difficulty in defining the jurisdiction and powers of His Majesty's consuls in the Levant, in regard to their judicial functions, from the heterogeneous elements comprising the society in those countries.

The consuls are, or often may be, called upon to decide in civil and criminal cases, not only between persons under their own jurisdiction, but between their own subjects and those of almost all the other nations of Europe, governed by their respective laws, and also sometimes between British or British-protected subjects and subjects of the Sultan.

I will, as well as I am able, make my remarks on the different cases which may be brought before a consul, but I must premise them, by stating, that I cannot appeal to practice or experience. From the recent establishment of this consulate, from there being no British residents but the members of my own household, and only two or three Ionians settled here, I have never been called upon to exercise judicial functions. In order to direct my opinion, I have only the recollection of cases which have come to my knowledge during a long residence in the Levant. I have not had much practical experience, though I have acted on several occasions as arbitrator or assessor, but never either as plaintiff or defendant in a suit.

In civil cases, where both parties are British subjects, the practice of deciding suits, by naming assessors or arbitrators to assist the consul, appears to me a system well adapted to the constitution of society in the Levant. The Court thus formed, is one of reconciliation, rather than of justice; for I have remarked, as far as my own experience goes, that the assessors or arbitrators have generally subtracted from the pretensions of either party, so as to settle the difference with less irritation, than would have been occasioned by the extreme of justice having been enforced: and certainly, this system is calculated to preserve harmony in the society. In Mr. Consul-General Cartwright's instructions to Mr. Consul Brant, the line of proceeding is laid down with so much judgment and precision, that I know not any better regulations can be formed, but there is still something wanting to guide the consul on many points.

The mode of naming assessors or arbitrators, and their powers, require to be distinctly defined.

Two methods of choosing them present themselves, and in selecting either, reference must be had to the powers with which they are to be invested. One way is, to allow the parties themselves to choose them, when they would take the character of arbitrators. The other is to empower the consul to name them, and they would then be assessors.

If the responsibility of the decision be intended to rest with the consul, and if it be decided that he can give sentence, though in opposition to the opinion of the assessors or arbitrators, it would then be best, that the parties named their own arbitrators, who would become the advocates of their respective friends, and the consul alone would decide on the merits of the case; but if the consul be relieved from the responsibility of the decision, and be required only to guide the opinion of the assessors and to enforce the execution of the sentence, then perhaps the better way would be, for him to name assessors, who would in fact constitute a jury, in whose hands the decision would rest. If the arbitrators be named by the parties, their assumption of the character would be voluntary, and their remuneration may be left to custom or to particular agreement, without the interference of the consul; but if he be empowered to name assessors, they should be taken in rotation from the members of the community, and the consul should have authority to fix a suitable remuneration for trouble and loss of time.

Considering that consuls are not generally persons deeply versed in the practice of courts of law, that the society is small, that its members are mostly connected, either by relations of business, by friendship, or by family ties, I think the settlement of differences by a court of reconciliation, is better than by a court of law. If the former be preferred, to render its decisions of more force, the parties should enter into a formal engagement to abide by the sentence of the court, from which no appeal should be allowed, unless it were joined in by all the arbitrators of the appellant.

If the court be considered one of law, the usual course of appeal must be open.

It should not be forgotten, that the cases likely to be brought before a consul, are mostly commercial, and therefore susceptible of settlement by arbitration; indeed, similar cases, when brought into a court of law in England, are often, by order of the judge, referred for decision to persons versed in the usages of commerce.

Supposing the plaintiff to be a foreign European, and the defendant a British subject, the cause will be tried before the British consul, and the usual custom of selecting assessors of the respective nations of the litigants, as equitable, may with propriety be continued. But, as stated in Mr. Consul-General Cartwright's instructions, already referred to, the power of the British consul can go no further than to exonerate the defendant from the claim of a foreigner, for he cannot enforce his sentence against a foreigner, if his own

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consul refuse to do so. It may however admit of consideration, whether the British consul should not be authorized to decline entertaining a cause instituted by a foreign European plaintiff against a British defendant, unless the plaintiff entered into a formal engagement to submit to the sentence, and his own consul undertook to enforce it in the event of opposition on his part. I think this might obviate any difficulties, and I do not know that any objection would be made to such engagement.

Where the plaintiff is a British subject, and the defendant a foreign European, the trial will of course take place before the consul of the defendant; and the assessors, in conformity to established usage, will be of the nations of the respective parties to the suit. If the British consul, by offering on his part to enforce the sentence, and on the part of his subject, to abide by it, could induce the foreigner and his consul to enter into a similar engagement, it would be very desirable that he did so; but if such an engagement were declined, no other means of redress would be open to the British plaintiff, than to submit to the usage of the consulate judging the cause, and to follow the mode of appeal pursued by the subjects of the nation represented by the consul.

In the capitulations of European nations with the Porte, the principle is admitted, that they should not be subject to the tribunals of the country. Mr. Consul-General Cartwright thinks it irregular for a British consul to decide a dispute between a Turkish and British subject, where the Turk is plaintiff; but it appears to me, that in such a case to admit the interference of a Turkish tribunal, were to abandon a valuable privilege, and to submit to a certain injustice. Although it is not stated distinctly in our capitulations, that such shall be the course, yet the spirit of them fully authorizes the interference, and I believe that custom justifies the practice of a Turkish plaintiff seeking redress from a British defendant, before a British consul. Were it tolerated, that a Turkish plaintiff could cite a British defendant before a Turkish tribunal, there would be no end to unjust claims or vexations, which might be multiplied for the sake of the bribes that must be given to the judge to evade them, and I conceive it so essential not to concede this point, that the residence of Europeans in Turkey almost depends on its maintenance. I believe that very few Turks who had a just claim, would refuse to refer it to a British tribunal rather than to a Turkish; for in the latter case, however just his cause, he must obtain a sentence by a bribe. Every Turk making an unjust claim, called usually an *avania*, would certainly decline to abide by the decision of a British consul.

It may be urged, that a consul has no power to enforce the sentence; but ways might be found of obviating this difficulty. The Turkish authority supporting the claim, might be induced to enter into an engagement to enforce the decision of the court; or the plaintiff might be persuaded to make a deposit, to be forfeited if he refused to abide by the sentence. If neither of these expedients, nor any other that might be devised, would be assented to, it might then become a matter of consideration, whether, under such circumstances, it were not better to refuse to entertain the cause. Such suits would occasion trouble, difficulty and inconvenience, but in a far less degree than would result from obliging a British subject to defend himself in a Turkish tribunal.

Where the British subject were the plaintiff, he would have no recourse but to prosecute his claim before a Turkish tribunal, and in such case he must be prepared to make the best bargain he can with the judge. This is all the justice he can expect; indeed, it is as much as any Turkish subject, whether Mahomedan or Rayah, can obtain from a Turkish judge.

To fix the jurisdiction of British consuls in criminal cases, is a subject fraught with difficulties; and however indispensable it is that some law or instruction should be framed to define the authority and regulate the proceedings of a consul, yet it is easier to point out the difficulties, than to suggest appropriate remedies. I confess I have little hope of being able to throw light on the subject, from my inexperience in such matters.

As far as regards British-born or protected subjects residing in the Levant, from their pursuits and character, it is not likely that any criminal cases would occur, except among British sailors, or Maltese and Ionians.

The best way to dispose of the cases relating to sailors, where British interests are alone concerned, would be to deliver them over to the commander of one of His Majesty's ships of war, and should none be present, an application might be made to the admiral, to send one at his earliest convenience. Should the case occur at a place not accessible to ships of war, as for instance in the Black Sea, then the criminal had better be sent to the ambassador.

To prevent the great expense of transporting witnesses, perhaps there might be no serious objection to authorizing the consul, assisted by assessors, to take depositions and cross-examine the witnesses on oath, and to admitting authenticated copies of such depositions and cross-examinations accompanying the criminal, as oral testimony.

The sending Ionians or Maltese to their respective islands, might also be the best way of disposing of criminal prosecutions against them by British subjects; and the same mode recommended in the case of British sailors might be adopted, of sending depositions and cross-examinations taken before the consul, assisted by assessors, instead of transporting witnesses to give evidence. In such cases the Turkish authorities would not claim a right of interfering, and even if applied to, which is highly objectionable, if it can by possibility be avoided, they might perhaps decline to interfere.

Where the criminal were a British or a British-protected subject, and the injured party a foreign European, the case would be tried before the British consul. If he have no power to decide definitively, the case must be transferred elsewhere.

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Where the criminal were a foreign European, and the injured party a British subject, redress must be sought in the tribunal of the consul under whose protection the criminal may be, and the proceedings must be regulated by the laws and usages of that consulate, and of the nation to which it belongs.

But the most difficult and delicate cases to legislate for, are those wherein the injured party is a Turkish, and the offender a British subject, and should the former be unfortunately a Mahomedan, the difficulties will be very much increased.

To surrender the criminal to Turkish justice, would be equivalent to delivering him up to execution without a trial; and to give him to the Turkish authorities for execution, even after being condemned by a British tribunal, might be followed by serious inconvenience. Europeans owe the tranquillity and security they enjoy among a barbarous and fanatic people, to the immunity their capitulations afford them, from any interference with them by the Turkish authorities. To claim, or to allow this interference in any case, is to weaken the bond of our security, and may induce attempts at a frequent interference, and finally bring on a state of things which might render the residence of Europeans in the country dangerous. Every person acquainted with the feelings of Turks, knows that Christians are hated, and that nothing but fear of their power restrains those feelings from manifesting themselves in an offensive manner. It must be equally well known, that if any point be yielded to a Turk, he cannot appreciate a just or liberal motive, but supposes it conceded to fear or weakness, and will not fail to demand other concessions. It is this fanatic and encroaching spirit which must be resisted, and which renders it impossible to act towards Turks, as one might be disposed to act towards a more enlightened government and people.

It cannot be denied, however, that to refuse justice in a case where a British subject had killed or wounded a Mahomedan, might be attended with very fatal consequences. The Turks cannot understand why a consul cannot order the execution of an acknowledged criminal, and his refusal to do so, would be considered by them as a denial of justice; yet I am far from recommending such power to be vested in consuls, and think it best that reference should be made to the ambassador. Cases might occur where popular excitement might render it impossible to await instructions from the ambassador, and some prompt measures might be indispensable for the safety of the whole society. Instructions should be given to the consuls how to act in such extreme cases. In most instances of the kind, money might avert fatal consequences, and to compromise wounds or death in that way, is allowed by the Mahomedan law; but as Maltese and Ionians are the persons most likely to occasion dilemmas of the nature supposed, it were well to give the consul power to inquire strictly into the character of persons coming into the Levant, and to order them away if they cannot satisfy him as to their respectability. The want of authority of this nature has occasioned some towns in Turkey to be the refuge of men driven from their own country by their crimes or misconduct, and if something of this kind be not done, serious inconvenience to the whole European society may at some future period be the consequence.

It remains only to add, that the power of the consul should in all cases be well defined. He should have the power of imprisoning in some cases, civil as well as criminal; and the mode in which he may enforce his sentences on refractory parties, should be pointed out to him.

Considering the innumerable difficulties in giving precise instructions in so many complicated cases, it were much to be desired that the persons employed to draw them up were well acquainted with the state of society in the Levant, so peculiar in itself, and so totally different from any other, perhaps in the whole world. Here is a community formed of small members of all the nations of Europe, each little circle governed by its own magistrate and laws, and all living independent of the government of the country. It can well be conceived that very complicated interests may grow out of such a state of society; and as it will be quite impossible to legislate for every case that may occur, after all is done, a great deal must be left to established usages, and not a little to the discretion of the consul, particularly in many difficult circumstances which cannot be foreseen.

Something is imperatively called for, and I can only hope that regulations will be framed, which, while they direct the consul in his duty, will relieve him from the heavy responsibility to which he is at present subject, without, in many cases, any other guide than his own unaided judgment.

Trebizond, March 23, 1835.

(Signed)

JAMES BRANT, Vice-Consul.

(17.)—REPORT of His Majesty's Consul at Smyrna, on the Practice observed in Judicial Proceedings in the Consular Court at that place; showing its Defects, and proposing Remedies for its Improvement.

THE undersigned, His Majesty's consul at Smyrna, having been instructed by Mr. Bidwell, in his despatch, No. 5, of the 30th December, 1834, to explain the judicial practice now observed in his consulate, both in civil and criminal cases, to point out what appear to him to be the defects incidental to it, and to suggest the remedies most calculated in his judgment to remove them, considers it necessary, before entering into the details of the subject, to submit a few observations on the general principles which constitute the consular jurisdiction in the Levant, in order to render those details more easily intelligible.

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The subjects of European states are established in Turkey on the faith of treaties with the Porte, called capitulations, in virtue of which their persons and their commercial interests, in all transactions among themselves, are not amenable to the jurisdiction of the local authorities, either in civil or criminal matters. But this valuable privilege, while it protects them from the effects of arbitrary power and violence, would become a never-failing source of inconvenience and disorder, if Europeans were thereby to be exempted from all legal restraint. It therefore became necessary for European governments to appoint national magistrates in Turkey, who, being on the one hand charged with the protection of the persons and interests of their subjects against all foreign aggression, were bound, on the other, to restrain them within the bounds required by a just measure of reciprocity, and to prevent the laws and justice from being violated, not only in transactions among each other, but in their intercourse with the subjects of other nations.

Such is the origin of the judicial and coercive powers conferred upon consuls in the Levant. Exclusively invested with the right of administering justice to, and of maintaining order among their fellow-subjects within the extent of their jurisdiction, they unite in themselves the functions of civil and criminal officers. They decide in the first instance in civil cases, and confine themselves in criminal matters to the arrest of the delinquent, and to the collection of the evidence in proof of his guilt.

The establishment of numerous judicial authorities in one place, independent of each other, would cause incessant trouble and conflicts, if the limits of the jurisdictions of each were not determined, and to this end the maxim "*Actor sequitur forum rei*" has been invariably acted upon in the Levant; if therefore a dispute arise between two individuals of different nations, the consul of the defendant is the competent judge, and the consul of the plaintiff merely transmits the representations addressed to him by the latter, to the consulate which has to take cognizance of his claim.

Ottoman subjects are excepted from the operation of this rule, the right of having their differences with Europeans tried by their own tribunals, whether they be plaintiffs or defendants, having been expressly reserved to them by the capitulations.

All questions regarding real property (which Europeans have no legal right to possess in Turkey, though the acquisition of it is tolerated) are decided by the Ottoman tribunals, which are alone competent to determine the validity of title-deeds framed according to the forms of Turkish law, without reference to the nationality of the contending parties, and even when both are European. But in all criminal cases the consul of the delinquent is the authority alone competent to take cognizance of the offence, whatever the nationality of the injured party may be.

The preceding general rules are followed by the consuls of all nations, and guide them in their relations with each other, and with the local authorities. In other respects each consul acts according to his particular instructions.

His Majesty's consuls in the Levant are differently situated from the consuls of other nations. The late Levant Company's bye-laws related chiefly to the commercial concerns of that body, and contained but few instructions as to the judicial functions of their consuls. Obligated, however, to exercise those functions with hardly any other rules to guide them than what natural equity suggested, as the laws of England were found in many cases inapplicable to local exigencies, they were under the necessity of creating for themselves the peculiar kind of procedure which is at present observed, assimilating it as much as possible to that followed by their colleagues. But it may be imagined that they experience great difficulty in enforcing a system not sanctioned by any superior authority, and consequently not having any obligatory effect. In order, therefore, to avoid personal responsibility, they often allowed suitors to deviate from the course in practice, the result of which has been to introduce vagueness and uncertainty in the progress of suits.

Foreign consuls on the contrary having been appointed originally by their sovereigns, and corresponding with their governments, were furnished on their first establishment, and subsequently as occasion required, with positive instructions for their guidance.

The French government promulgated in 1778 special regulations for the observance of its consuls in the Levant in their judicial proceedings, which were followed by the publication in 1806, of a complete code of civil procedure. The Austrian government published a similar code in 1815; and the consuls of other powers, who have not codes of their own, are expressly authorized to conform to that of France.

The foregoing observations will, it is hoped, show how necessary it is that a well-defined and appropriate system of procedure should be adopted by His Majesty's consulates in the Levant, as well as that the necessary power should be conferred on the consuls to carry it into execution, for in a country like this, where the interests of British subjects are so intermixed with those of the subjects of other foreign states, it is indispensable that the magistrate charged with the duty of protecting the former, should also have the power of administering justice to the latter, and of preventing his authority from being evaded by fraud or caprice.

It is now proposed to treat of the practice in civil cases.

All causes of any importance brought before the consular courts in the Levant, are conducted in writing, but those of small amount or of a trifling nature are heard and decided summarily by the consul; it frequently happens, however, that one of the parties, not satisfied with the decision thus pronounced, or instigated by a litigious spirit, or by the cupidity of a set of low practitioners, insists on instituting a written suit, and the consul not being authorized by any specific regulations to determine the amount to be so tried, is obliged to accede to the demand, when probably the expense of such a process exceeds the trifling amount sought to be recovered.

1. Of summary proceedings.

To obviate this inconvenience it is proposed: That His Majesty's consul shall be authorized to decide in a summary manner all differences, of which the principal shall not exceed the value of 10*l.* sterling.

Foreign consuls are furnished with precise and positive regulations, which fix invariably the number of writings that the parties to a suit are permitted to produce, the periods wherein they must be presented, and the penalties incurred by defaulters. The British consuls not having any regulations of the kind for their guidance, have endeavoured as much as possible to conform to the practice observed by their colleagues, by fixing the number of writings at two on each side, and the term for the presentation of each at fourteen days, but these rules not being sanctioned by superior authority, and the consul not having ventured to attach any penalties to their contravention, are often evaded by the artifices of lawyers, who are always interested in retarding the termination of causes; hence arise frequent complaints on the part of other consulates on account of the delays in suits brought before the British tribunal, in which foreigners are concerned, and thus an opportunity is afforded to persons of bad faith to impede the course of justice.

To remedy the defects incidental to this part of the practice, the following regulations are proposed:—

1. Each party to a suit shall not be permitted to present during its progress more than two writings.

2. In these two writings the plaintiff shall be bound to set forth the whole of his case, and the defendant to state all that he may have to advance in his defence. The writings on each side shall be accompanied by whatever documentary evidence (depositions and the like) the parties may possess, to prove the truth of the statements they contain.

3. The consul should be authorized to allow a third writing on each side to be presented, if the nature of the suit appear to him to require it.

4. The term of fifteen days shall be allowed to the defendant to put in his answers to the first demand of the plaintiff, and of eight days for answers to all other writings in the suit.

5. These terms shall be strictly enforced, and they shall begin to run from the day following that on which the writings shall be signified to the opposite parties.

6. The consul shall be authorized to prolong these terms at the demand of either party, if the nature of the case shall appear to him to require it, as also to shorten them, when the case is urgent, and delay would be prejudicial.

7. At the expiration of the terms fixed, the consul shall, at the demand of the party who has used all due diligence, declare the proceedings closed, and pronounce judgment by default, unless good cause be shown to the contrary by the opposite party. In the latter case a fresh term, to be fixed by the consul, shall be granted.

8. After the proceedings shall have been declared definitively closed, no other writings produced by the parties shall be received.

Although the judicial authority is vested in His Majesty's consul solely, he has been accustomed to call upon two, and sometimes four assessors, to assist him at his sittings, according to the importance of the cause for trial. These assessors are selected from among the British merchants, when both parties to a suit are British subjects, but when the plaintiff is a foreigner, one of the assessors is chosen from among his own countrymen, or two when there are four. The assessors are merely required to give their opinions on the case, which is decided according to that of the consul, by a written sentence, though they may differ from him thereupon; but in this case, on signing the sentence, they are at liberty to state their dissent from any parts of it. The decisions of the consular tribunal are grounded as much as possible on the general principles of English law, but when they are inapplicable to local exigencies, the court is guided by natural equity, and often by custom when any particular local usage has been long enough established to have acquired the force of law.

His Majesty's consul at Smyrna is authorized by his instructions, after the communication of his sentences to the parties, to arrest debtors in execution, if required to do so; and even before the hearing of the cause, if the plaintiff make an affidavit of a debt, and the defendant give not sufficient bail to secure his appearance, the consul having good reason to suppose that he intends to abscond, may imprison him until the day of trial.

Sentences are executory provisionally in the Levant, notwithstanding appeal. In the latter case, if the judgment be pecuniary, either by the deposit of the amount in the cancellaria or in the hands of a third person, by satisfactory security to the plaintiff, or by the arrest of the debtor. If the judgment order any specific act to be done, the appellant is required to give security for the prejudice which its non-execution may occasion to the successful party. In all cases the depositary and surety must be persons under the British jurisdiction.

Although His Majesty's consul insists on the provisional execution of his judgment, on the strength of general usage, he is not authorized to do so by any precise instructions; and as the principle is so salutary and universally acted upon in the Levant, it would be very desirable that it should be made obligatory on British subjects.

It is proposed, therefore, to establish the following regulations:—

1. All judgments pronounced by His Majesty's consuls in the Levant shall be executed notwithstanding appeal. In the latter case, the execution shall be provisional; viz.,

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2. Of proceedings in writing.

3. Of judgments, and of their execution.

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if the condemnation be pecuniary, by a deposit of, or security for, the amount, or in default of either, by the imprisonment of the debtor's person; if the condemnation be not pecuniary, by security for the consequences that may result from the non-execution of the judgment.

2. The depositary and the surety shall be persons subject to the jurisdiction of His Majesty's consul.

3. The execution of judgments shall in no case be delayed beyond the time fixed for the lodgment of an appeal, unless it shall be otherwise ordered in the sentence.

4. If a final judgment of a pecuniary nature shall not be executed, the consul shall be bound to allow the goods of the debtor to be seized, and if there be no goods, the imprisonment of his person. If the sentence enjoin the performance of any act, the consul shall cause it to be done by the means that may be at his disposal.

4. Of appeals.

An appeal from the consular court at Smyrna lies to that of the consul-general at Constantinople. The term usually allowed for giving notice of an appeal is fourteen days from the signification of the sentence, which has not, however, been fixed by any positive regulation, nor has that in which the appeal must be prosecuted before the superior tribunal. It therefore often happens that the right of appeal is converted into a legal method of protracting suits, for the appellant after having lodged an appeal within the period limited, is at liberty to follow it up whenever he pleases, without running the risk of being debarred from prosecuting it any future time, however distant. Foreign consuls have special instructions in this respect, and British subjects benefit by the rules laid down, when they are plaintiffs in suits tried by them; it would, therefore, be but just that the subjects of foreign states should be placed upon a footing of reciprocity when they are plaintiffs in the British court, and that an abuse should be removed, whereof dishonest persons alone take advantage to harass their opponents. It is essential likewise to determine to what amount His Majesty's consuls may decide causes without appeal. The French code fixes the sum at 1,000 francs; and it is proposed that this standard shall be adopted by the British consulate.

The following regulations would, it is submitted, remedy the defects incidental to the practice in matters of appeal:—

1. The party in a suit who may consider himself aggrieved by any decision of the consular court, shall be bound to give notice of an appeal therefrom within fourteen days from the day following that on which the judgment shall have been signified to him. No appeal shall be received after the expiration of this period.

2. The party shall be bound to require in the act intimating an appeal, that the copies of the writings in the suit shall be furnished to him, and the omission of this formality shall render the act null and void.

3. The party shall be allowed two months to prosecute an appeal before the superior tribunal at Constantinople, and this term shall begin to run from the day following that on which the copies of the writings shall be delivered to him.

4. If at the expiration of the two months the appeal be not prosecuted, it shall be considered as not having been lodged, and the judgment shall be executed definitively.

5. His Majesty's consuls in the Levant shall be authorized to pronounce final judgment in all differences, when the principal does not exceed the sum of 40*l.* sterling.

The term for the prosecution of appeals is fixed by the French regulations at six months, and by the Austrian at one month. From the former court they are carried to Aix in Provence, and from the latter to Constantinople, which accounts for the difference. Although British appeals, like the Austrian, are carried to Constantinople, the term of two months is considered by the undersigned to be more reasonable.

It often happens, that in the course of a suit, incidental demands are made by the parties, which require immediate decrees. These being subject to appeal, become the means of delaying the final judgment for an indefinite time. It would therefore be proper, that in no case an appeal against a decree on an incidental demand should cause the trial on the merits of the case to be suspended, but that this appeal should be lodged together with that against the final judgment.

The following regulation would, it is submitted, remedy this defect:—

No appeal against decrees on incidental demands, shall be prosecuted till after the definitive judgment on the merits of the case shall have been pronounced, and concurrently with the appeal against such judgment.

It is universally admitted in the Levant, that a person in whose hands a sequester is made, is obliged to accept it. The practice observed in laying sequestrators is this:—The claimant addresses a petition to his consul, setting forth his demand, which is signified to the consuls, both of the holder of the money or goods sought to be sequestered, and of the alleged debtor to whom they belong, to be by them communicated to the parties concerned. Although the acceptance of a sequester cannot be refused, yet the person demanding it is bound to furnish the holder of money or goods with adequate security for the consequences that may result therefrom; and he may, moreover, require that the surety shall be a person under the same jurisdiction as himself. British subjects are often in the habit of availing themselves of this privilege, when the holder of funds or goods and the alleged debtor are foreigners: but when these, in their turn, seek to lay sequestrators in the hands of British subjects, it is optional with the latter to accept them or not. It would be desirable that His Majesty's consuls should be authorized to compel British subjects to accept sequestrators; for, independently of the universal admission of the principle in Turkey

5. Of incidental demands.

6. Of sequestrators.

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and of the expediency of using reciprocity in a country where British interests and those of foreigners are so intermixed, it may happen that a British subject being agreed with a dishonest debtor, may, by refusing to accept a sequester, afford him the means of evading the payment of a just debt. It is proposed, therefore,—

1. That British subjects established in the Levant, shall be bound to accept sequestrators, which may be laid on funds or goods in their hands, belonging to third persons, provided that at their demand sufficient security be given to protect them from all consequences that may result from so doing.

2. British subjects, who shall refuse to accept sequestrators intimated to them, shall thereby render themselves responsible towards the persons demanding them, for the consequences of such refusal.

Whenever the fact is established that a British trader in the Levant is in a state of failure, either by a voluntary declaration of insolvency on his part, or by any other proof that he is unable to fulfil his engagements, the consul, at the requisition of one or more of his creditors, orders in the first place the counting-house and warehouses of the insolvent to be sealed up by the canceller; he then appoints two provisional assignees, when the seals found on the premises, the whole are delivered to them, and they are invested with the management of the concerns of the insolvent. The duties of the provisional assignees are: To ascertain from the books the debtors and creditors of the estate, and to draw out a balance-sheet with as little delay as possible, and in the meanwhile to sell all goods of a perishable nature, and to recover all sums immediately payable to the estate as they become due.

As soon as the provisional assignees have presented the balance-sheet to the consul, a meeting of the creditors is called for the proof of debts, and at the same meeting the definitive assignees are chosen by the creditors who have proved, to whom the books, papers, merchandise and effects are delivered over by the provisional assignees, and the former thenceforward charged with the liquidation of the concerns of the estate, and the payment of the dividends when duly authorized by the consul. The insolvent is allowed his certificate by the consul, if it be signed in conformity with the provisions of the statute of 6 Geo. IV., c. 16, and accompanied by a declaration on the part of the assignees of its being so signed, and that he has given up the whole of his property for the benefit of his creditors, and has in all things conformed to the established usages in similar cases; provided also, that he make oath, that the certificate was obtained without fraud, and no cause be shown to the contrary by any of the creditors.

Such is the practice observed in cases of failure. It is suited to local wants, and does not appear to the undersigned to require any alteration; but the consul having no authority to enforce its observance, instances have occurred, when British subjects in a manifest state of failure, and unable to fulfil their engagements, have disputed the consul's right to interfere in their concerns, and profiting of his want of power to compel them to do justice to their creditors, have followed their own course, thereby lowering the national character in the eyes of foreigners, and causing a distrust of Englishmen to be felt, which cannot but be extremely detrimental to the general interests of British merchants established in Turkey. In order to prevent such serious abuses in future, it is proposed that the following regulations should be established:—

1. Every British subject carrying on trade in the Levant, shall be declared by the consul in a state of failure, if on judgment being obtained against him by one or more of his creditors, he is unable to comply with the same, and no voluntary declaration of insolvency, on his part, shall have been made.

2. He shall be bound to submit to the formalities which have been established by long usage in cases of failure.

3. If he shall refuse to deliver up his books and effects, or to make a full and true discovery of his estate, he shall be considered as a fraudulent bankrupt, and the consul shall be authorized to proceed against him criminally.

It frequently happens that a trader has been insolvent for some time prior to his being actually declared so, and in many cases it is important to fix the precise period of his insolvency. For the purpose the following regulations appear to the undersigned to be necessary:—

1. His Majesty's consul shall be authorized to declare by a decree, the period of a trader's insolvency, which shall be ascertained by the provisional assignees of his estate, upon the examination of his books.

2. No appeal shall lie against this decree.

It is ordered that all disputes in partnership concerns, and in matters of account, shall be decided in the foreign consulates in the Levant by arbitration, and that the proceedings be regulated by the provisions of the French code of civil procedure.

It is optional with British subjects to adopt this course or not, as the consul is not authorized to prescribe it; but it would be desirable that His Majesty's consuls should also be bound to follow a method so well calculated from its nature for the settlement of differences, which require such a degree of examination and investigation as a tribunal cannot bestow upon them.

The following regulations are therefore proposed:—

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7. Of failures.

8. Of Differences between Partners, and of the Settlement of Accounts.

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1. All disputes in matters of partnership, or of account, between His Majesty's subjects established in the Levant, or between them and foreigners, shall be settled by arbitration.

2. A petition, setting forth the particulars of the claim, and demanding an arbitration, shall be addressed in writing to His Majesty's consul, which shall be signified to the opposite party, to whom a term of eight days shall be granted for the nomination of an arbitrator on his part. This term shall begin to run from the day following that of the signification of the petition.

3. At the expiration of the said term, if the party failed to name his arbitrator, the consul shall be bound to admit the claim as well founded, and to pronounce judgment accordingly.

4. If previous to the expiration of the said term, the party prove his inability, from any good cause, to name an arbitrator within that time, an extended term of eight days shall be allowed him to do so.

5. The second delay shall not be prolonged, and the consul shall be bound, if the party has not named his arbitrator at its expiration, to admit the claim as well founded, and to pronounce judgment accordingly.

6. Within five days following the first or second term fixed in the preceding articles, the parties shall be bound to execute the arbitration bond.

7. The parties and the arbitrators shall be bound in all other particulars to follow the rules laid down in the French code of procedure relative to arbitration.

8. If any question shall arise between the parties, whether a dispute is of a nature to be settled by arbitration or otherwise, the consul shall determine that point summarily and without appeal.

9. Of Evidence.

In all causes tried by the consular court at Smyrna, when the testimony of witnesses is necessary to prove the facts of the case, their depositions are taken in writing. The natives of the Ionian Islands, and their co-religionists in general, are extremely averse to make oath as to the truth of their statements. It often happens that religious scruples are urged by witnesses as a pretext to avoid the guilt of taking a false oath, but they are sometimes sincere; and as it is very difficult, if not impossible, for the consul properly to appreciate the motives of those who refuse to be sworn, he is embarrassed as to the degree of credibility to be attached to their evidence.

The depositions of witnesses are likewise entirely voluntary, as the consul has no power to compel their appearance. The consequence is, that the ends of justice are frequently defeated by their unwillingness to appear, when cited by the parties to a suit.

As foreign consuls, whenever the testimony of persons under their jurisdiction is deemed necessary, will compel them to depose in the British court, it is submitted, that upon the principle of reciprocity and to further the ends of justice, His Majesty's consul should be empowered to compel British subjects to do the like in foreign courts, at the requisition of foreign consuls.

To remedy the defects above stated, the following regulations are proposed:—

1. No deposition of a witness shall be received as evidence in a trial by the consular courts in the Levant, which shall not be made on oath, but in civil and criminal cases.

2. Every British subject who shall fail to appear, when duly cited as a witness, in any cause brought before the consular court, or shall refuse to be examined on oath, shall be liable to pay a penalty of 10*l.* to the party aggrieved, and damages equivalent to the loss sustained by want of his evidence.

3. Every British subject who shall refuse to appear, and be examined on oath as a witness in any cause pending in a foreign court, when required so to do by His Majesty's consul, shall thereby render himself liable to the payment of the penalties fixed by the preceding article.

10. Of Imprisonment for Debt.

The consul is authorized by his instructions, to imprison a debtor at the requisition of his creditor, in execution of a sentence; but it sometimes happens that his confinement is prolonged to an indefinite period, either through the obstinacy of the one, or the animosity of the other, and the consul is at a loss how to act. If, on the one hand, he released on his own authority, after a short time, a debtor who sought to elude the payment of his debt, he would commit an act of injustice towards the creditor; and, on the other hand, he could not, without being guilty of inhumanity, deprive of his liberty for an indefinite time an individual who might really be unable to pay; perhaps the father of a family, whose labour was essential to their support, and who is confined merely from a vindictive feeling on the part of his creditor. It should be recollected that this measure is only resorted to for small sums against persons in indigent circumstances, and who depend on their daily labour for subsistence.

In order therefore to reconcile, as much as possible, the demands of justice with those of humanity, the following regulations are proposed:—

1. Every creditor, acknowledged as such, to the amount of 2*l.* sterling or upwards, in virtue either of a judgment obtained, or of a summary decision of the consul, shall be at liberty to require the imprisonment of his debtor. The requisition to this effect shall be made in writing.

2. The prisoner shall provide for his maintenance during the first month of his confinement, and the creditor during the remainder thereof.

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3. If the prisoner make oath that he is unable to provide for his maintenance, even during the first month, the creditor shall be bound to do so.

4. The amount of the daily allowance for the maintenance of the prisoners shall be fixed by the consul; it shall be payable on the first day of every week in advance, and on failure of regular payment, the debtor shall be released.

5. At the expiration of three months the debtor shall be discharged; but if the debt exceed 2*l.* sterling, the creditor shall at any future period have execution against his goods, though never more against his person for the same debt.

6. Every prisoner for debt shall be entitled to his discharge at any time, on surrendering all his effects (except his apparel, bedding and tools of his trade, not exceeding the value of 5*l.* sterling) for the benefit of his creditors.

In concluding this portion of the subject, the undersigned thinks it necessary to remark, that Europeans can only be governed in Turkey by a peculiar system of law, of a distinctive and conventional character; for while they enjoy the extraordinary privilege of being ruled by their own laws, though in a foreign country, the exercise of this privilege being confined within certain limits, on account of local difficulties, has necessarily undergone important modifications, and from this state of things, a sort of mixed system of law and custom has been established and acted upon, from the impossibility of following any other. The truth of this position has been felt by the European governments, and the instructions with which they have in consequence furnished their consuls, confer on them the powers that are necessary to enable them to perform the varied functions that they are called upon to exercise. In fact, when it is considered that the duties which in Europe are divided among so many different magistrates, all centre in the consuls in the Levant; that however extensive their knowledge of the different branches of the law may be, it can only assist them in a slight degree, on account of the impossibility of applying it in many cases to local exigencies; and that constant obstacles are opposed to them on account of the limited means of action which they possess; the absolute necessity of adopting in judicial proceedings such a system as has been described, composed both of national and foreign law, it is presumed, will be sufficiently obvious.

The regulations now suggested in civil matters appear to the undersigned to be those best suited to the wants and interests of His Majesty's subjects residing in Turkey. They differ, it is true, in some points from the national institutions, but it is on this account, that he thinks they will answer the purpose required. If the proposed system were entirely conformable to English law, it would be inapplicable to this country; if entirely foreign, it would not accord with the habits and feelings of Englishmen. Hence, therefore, arises the necessity of making it partake both of English and foreign legislation.

PRACTICE IN CRIMINAL MATTERS.

As has been already stated, the right of jurisdiction in criminal cases is exclusively vested in the consul of the nation to which the delinquent belongs, over whom the local authorities have no controul, whatever the nationality of the injured party may be. This rule admits of no exception, and the consuls have orders not to suffer it, on any occasion, to be infringed.

The practice observed in this consulate in criminal matters of a serious nature, pursuant to instructions received from His Majesty's consul-general at Constantinople, is the following:—

The consul, on being made acquainted with the commission of a crime within his jurisdiction, endeavours by every means in his power, and if necessary by applying for the assistance of the local police, to secure the person of the accused. The depositions of the witnesses, as to the facts of the case, are then taken by the cancellier in writing, in the form of interrogatories, to the truth of which the deponents are required to make oath. The accused person, if in custody, is confronted with the witnesses, in order to establish his identity. He is likewise interrogated, and his answers are taken down in writing by the cancellier. If he produce witnesses in his defence, the cancellier receives their depositions also, under oath. If the innocence of the accused be established, or the proofs of his guilt be deemed insufficient, he is immediately set at liberty; but if they be strong enough to warrant his detention, or conclusive as to his guilt, the consul reports the circumstances of the case to the consul-general at Constantinople, to whom he transmits copies of the depositions, and awaits his instructions for his further proceedings.

The same system is pursued in similar cases by all the other consuls in the Levant. The undersigned is of opinion, that it is not susceptible of any modification, and that it is impossible to follow any other.

With respect to such minor offences as in Europe are cognizable by justices of the peace and police magistrates, the consul tries the persons accused summarily, and if convicted they are punished by imprisonment, the duration of which is more or less prolonged according to the nature of the offence. When a British subject has been frequently convicted of the same offence, and his behaviour tends continually to disturb the public peace, the consul requires him to give bail for his future good conduct. If he be unable to do so, he is ordered to quit the country within a certain fixed period; or if he persist in remaining in Turkey, the British protection is withdrawn from him, and he becomes subject to the jurisdiction of the local authorities. Experience has convinced the undersigned, that this

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measure is indispensably necessary towards the natives of Malta and of the Ionian Islands, whose turbulent and riotous acts too often give rise to serious complaints on the part of the Turkish authorities. He must however admit that he has adopted it of his own accord, and from necessity, as it would otherwise be impossible to preserve order among individuals of that class, who are extremely numerous in the Levant, and the greater portion of whom are without any fixed residence, or certain means of procuring a livelihood.

It would be expedient that measures so necessary for the preservation of the peace of society, should be authorized by superior sanction, and the following regulations are consequently proposed:—

1. His Majesty's consuls in the Levant shall be authorized to take cognizance of inferior offences or misdemeanors committed by His Majesty's subjects, and to hear and decide thereupon in a summary manner, as well as to punish the offenders on conviction, by imprisonment, the term whereof shall be fixed by the consul, according to the nature of the offence, and shall in no case exceed three months.

2. All British subjects who shall have been convicted of misdemeanors, shall be bound to give bail for their future good behaviour.

3. If they shall be unable to furnish such security, a term of ten days shall be allowed them to quit the country; and if at the expiration of that period they continue to reside in Turkey, they shall lose all right to the British protection.

4. If they furnish the security required, the surety shall be a person under the jurisdiction of the consul, and a penalty shall be attached to the bond, which shall be forfeited on a repetition of the offence.

5. The amount of the penalty shall be fixed by the consul, and shall not be less than 20*l.* nor more than 60*l.*

6. All fines shall be appropriated to the use of the British Hospital, or of other charitable institutions at Smyrna.

Smyrna, May 30, 1835.

(Signed) R. W. BRANT, Consul.

(18.)—*Copy of a Report from His Majesty's Agent and Consul-General in Egypt, on the Practice observed in Judicial Proceedings in the Levant; showing its Defects, and proposing Remedies for its Improvement.*

My Lord Duke,

Cairo, February 28, 1835.

IN obedience to the instructions conveyed to me in your Grace's despatch of the 30th December last, I have now the honour to forward (Inclosure No. 1) such observations as have occurred to me, on the practice as at present established in proceedings in the courts held by His Majesty's consuls in the Levant, as also on the defects found to exist in the present practice.

Mr. Thurnburn's commission as consul at Alexandria limits his authority, in a great measure, to the mediatorial office of *composing* differences between our fellow-subjects, agreeably to the *practice* and *usage* of the consulate, and to the provisions of the Act 6 Geo. IV.; but it is highly necessary that the consul's powers should be defined more precisely, in order to protect his responsibility, as well as to guard His Majesty's subjects against any arbitrary exercise of his authority.

Many doubts may arise as to the legality of the decisions at Cairo and Alexandria, cited in my inclosed, under the title of *Correctional Police*, which are in a certain degree confirmed by the King's Advocate (in answer to some objections raised to the instructions furnished to Mr. Consul Brant, at Smyrna, by His Majesty's consul-general at Constantinople), wherein he observes, "The difficulties which are suggested in this part of the observation, are not without foundation, for it appears from a report made by His Majesty's law officers on the 23rd September, 1826, relative to the power which consuls in the Levant might lawfully exercise, 'that considerable doubts might arise whether some of the powers which seem to have been committed to their consuls [those of the Levant Company], could be legally exercised, and particularly the general power of fine and imprisonment, mentioned in the 17th, 19th, and 20th sections of the charter of Charles II, &c.; and they accordingly submitted to His Majesty that if it should be thought expedient that the powers alluded to should be exercised by the consuls or officers to be appointed by His Majesty, it would be proper to resort to the legislature upon the subject.' I am not aware that any measures have been taken in consequence of this recommendation," &c.

If these decisions are illegal, they would expose the consuls to serious damages in any court at home. There could be no good reason for leaving this point in doubt, and it ought to be regulated by Act of Parliament.

An American author, whose work I have not by me to refer to, lays down the principle, that the European consuls in the Grand Seigneur's dominions exercise their authority over their own fellow-subjects in virtue of the powers tacitly conceded to them by the Sultan; so that by this rule, all their acts are to be considered as emanating from the local government, whose representatives they are. Were this principle once admitted, it would protect consuls against prosecutions in Europe, for what might there be deemed an undue exertion of their authority; but it would at the same time invest them with a jurisdiction which might be very liable to abuse in improper hands.

Should it be thought expedient to amend the proceedings in criminal cases, which

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subject the offender to capital punishment, transportation, &c., by empowering the courts at Malta to take cognizance of such offences committed in the Levant, although it does not appear likely to be effectual unless witnesses could be sent to give their evidence *viva voce* in Malta, (and this in many cases will be impracticable, from witnesses in such cases being foreign subjects, and in every case would be attended with much difficulty and expense,) still a salutary check might be imposed on such crimes, were the courts in that island empowered to take cognizance of capital offences committed in the Levant, by British subjects, upon the written evidence, officially collected on the spot; and to inflict such temporary punishment as might be deemed consistent with the nature of the offence.

With respect to proceedings in civil and commercial cases, I think it would be a great improvement if, instead of being referred to Constantinople, a final appeal were allowed to be made to Malta, where judges conversant with British law are always resident; (the French appeal to Aix;) for though the 41st bye-law of the late Levant Company provides in certain cases for reference to the courts of law and equity of the United Kingdom, still I cannot find a case on record, where reference of the kind has been resorted to in this country. But as the means possessed by a consul for carrying his own decrees, in the first instance, into effect, may be called in question, it would be necessary, in providing regulations for proceeding here in such cases, to prescribe also the mode of consular jurisdiction. Notwithstanding Mr. Consul-General Cartwright, in his instructions to His Majesty's consul at Smyrna, says that "the practice of having the assistance of assessors, although proper and equitable, yet it is not absolutely necessary for him [Mr. Brant] to choose assessors; and that as the judicial authority is vested in him solely, and that they are not affected by any responsibility, so he, when attended by assessors, may decide according to his own opinion and conviction, though they may differ with him therein," &c.; still I think it highly desirable that His Majesty's consular officers in this country, should not only have the power of calling upon the respectable members of the British community in criminal, and commercial, and civil cases to act as jurors, but should also have the means of enforcing their attendance by the infliction of a fine in case of refusal, without showing sufficient cause for their non-compliance; for which purpose a list might be made of all the members of the British community in the place, competent to such duties, at a general meeting early in January in each year, and the jurors be taken in rotation from that list.

There is another point to which I would call your Grace's attention, and upon which the consul's authority should be ascertained; I mean with respect to bankrupts and imprisonment for debts, which do not come within the jurisdiction of a magistrate: and also the responsibility of consuls, and other officers under them, with respect to money or other property deposited in the consulate, should be clearly explained.

In framing new regulations for the consulates, much light might be obtained from the French ordonnances, which form a complete code for the guidance of their consuls in the Ottoman empire; and though many of their provisions have become obsolete, and others inapplicable from the greater degree of personal liberty enjoyed by the French nation now that when those ordonnances were formed, they are still in force, and point out the course to be pursued by their consuls in almost every possible contingency. These ordonnances are printed, and may therefore be consulted, should it be considered useful.

The impossibility of referring to proper authorities in Alexandria during the existence of the plague, render these observations very imperfect, and by no means so complete as I could have wished them to be.

With the highest consideration and respect, I have, &c.,
His Grace the Duke of Wellington,
&c., &c., &c.,

(Signed)

PAT. CAMPBELL.

NOTES relative to the Consular Courts in the Levant.

Practice now in force by Usage.

CRIMINAL CASES.

It is hardly possible to say what is the practice now in force. In the year 1830 an atrocious crime was committed at Cairo, by a Maltese of the name of Giuseppe Camilleri. A regular inquiry proved the guilt of the man, and he was sent to Malta in August of that year.

By the answer of the Malta government, dated 15th October, 1830, it is evident the crime could not be punished in Malta, because "no person can by the laws of that island be brought to trial but on *viva voce* evidence." The question whether a crime committed in the Levant could be punished, even on *viva voce* evidence, appears to have been studiously waved in that despatch; the conduct of the consul even appears to be in some degree disapproved of, for having prevented the Egyptian authorities from bringing the man to punishment.

It appears the fact, and all the consuls in the Levant seem convinced of it, and act upon it as a vital principle, that whatever be the crime of which their fellow-subjects may be guilty, European policy will never permit them to give them up for punishment to the local authorities, since the loss of the jurisdiction exercised by them for centuries would prove more detrimental to our general interests in the East than all the benefit in the way of repression that could be anticipated by the punishment of a few criminals.

This does not, however, seem to be appreciated in Europe; Russia is the only power

Sir F. Hankey to
Mr. Consul-General
Barker.
Malta, Oct. 15,
1830.

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that, by the Treaty of Adrianople, has put upon legal grounds the jurisdiction over her subjects in the Levant.

We are entitled to the same privileges by the nature of our treaties, and it rests with us to exercise them.

Since the case of Camilleri, other crimes have been committed. One at Damiatta, by a Maltese, on a poor Arab woman, whom he murdered. That man, as well as all the other offenders, were exiled from the country, but some of them have even had the audacity to return. I may mention, *en passant*, Francis Sterlino was exiled for theft, and petitioned the Malta government to be authorized to return to this country only a short time ago.

In fact, with regard to criminal cases it can hardly be said that there is any system, and if any, it amounts to nothing more than actual impunity.

DEFECTS.

The defects in criminal cases are the utter impossibility of bringing the offender and witnesses before a tribunal competent to award that punishment crimes of this description deserve, without having recourse to the courts of the country, and the want of power, on the part of the consul, to empanel a jury to decide whether there is sufficient evidence to convict the offender before any higher tribunal that His Majesty may please to appoint for trying offences of a criminal nature committed in the Levant.

As many consular offices of His Majesty in the Levant are held by foreign subjects, it might be dangerous to commit the same powers to them as to consuls-general and consuls; and it may be found advisable to restrict their authority in criminal cases, to arresting an offender, collecting all the evidence on oath in their power, and forwarding an immediate report of the whole affair to the consul-general or consul, and then to await his directions on the subject.

CORRECTIONAL POLICE.

The practice, for the repression of misdemeanors and other offences, has been for the consul to assemble two or four merchants, according to the case, and punish the offender by detention and fine. There is on record a case at Cairo, of three months' imprisonment, and 100 dollars fine; and one at Alexandria of thirty days' imprisonment, and 150 dollars fine, besides damages to the party injured.

The general practice of certain Europeans to beat and otherwise illtreat the natives is a matter of grave consideration, inasmuch as it may lead eventually to very serious consequences. If a poor Arab illtreat a European, he is sure to be punished with a severe bastinado; whereas, when the reverse occurs, the European is rarely punished.

As it is doubtless necessary to invest all His Majesty's consular officers, of whatever rank, with powers to a certain extent to take notice of and punish offences coming under the head of correctional police, and as few of His Majesty's vice-consuls and consular agents in this country are the natural-born subjects of His Majesty, it would be advisable for the protection of British subjects generally in the Levant, to oblige such vice-consuls and consular agents from time to time to make a return of all sentences, whether of fine or imprisonment awarded by them, to His Majesty's consul-general or consul.

CIVIL AND COMMERCIAL CASES.

At this moment, in any civil or commercial case, when the parties have discussed the question at issue in writing, the consul assembles two or four assessors (the canceller to be always the registrar of the court), and the parties, to hear if they have anything more to add, and to answer the questions which the judges may deem proper to put to them, after which they give their sentence, together with the consul, by the plurality of votes. This is also done by vice-consuls. They judge in equity, and according to commercial practice, and seldom upon law. They are not lawyers, and have not been expected to constitute anything above a court of equity. These sentences were appealed formerly to His Majesty's ambassador at Constantinople, and now to His Majesty's agent and consul-general.

DEFECTS.

There have been cases where the consul could not find assessors. They all refused from private motives; the defect appears to be the want of power in the consul, to force the attendance of assessors.

The great defect in all consular courts consists, in the authority and jurisdiction of the different consular officers of His Majesty in the Levant not being sufficiently defined, and put upon a clear and legal footing.

I may here mention a very great inconvenience experienced by the consulate at Alexandria, arising from the great number of indigent Maltese and Ionian subjects, who arrive there without funds, without occupation, without the means of obtaining an honest livelihood, and without passports. These people leave their native islands with passports for different parts of the Levant, where they remain until they have exhausted their credit, then collect all they can to pay for their passage, and leave without asking for their passports, from the fear that their intended departure should become known to their creditors. It is much to be desired, that the consul should have the power and the means of sending all British or British-protected subjects out of the country, who, not possessing

passports, cannot show good and sufficient reasons for coming here, or their means of subsisting in the country.

Having, according to the best information I can collect, stated the practice and defects of the different British consular courts, as established in this country; and as the authority of His Majesty's consuls-general and consuls, as well as the acts, charters, deeds and laws, from which they derive that authority, are scattered in many and various documents, some of which are not in the possession of most of His Majesty's consular officers in the Levant; I humbly conceive, that the best remedy would be effected by His Majesty's being graciously pleased to cause the law officers of the Crown, under the direction of His Majesty's Government, to draw up and embody such instructions to His Majesty's consuls-general, consuls, vice-consuls and consular agents, not only in criminal and commercial, and civil cases, but also in cases of misdemeanor, bankruptcy and imprisonment for debt, specifying the modes of proceeding in each individual case; the maximum and minimum of punishment, either in the way of fine or imprisonment, or otherwise; the degree of their individual responsibility, as His Majesty may please to direct, always bearing in mind the impossibility of bringing an offender to condign punishment in this country, and the small accommodation possessed in prisons and gaols. Should it be His Majesty's pleasure so to direct, as it may be found requisite in some instances to refer to the local practice (particularly commercial practice) in the Levant, and as any reference to this country would be attended with delay, I take the liberty of mentioning the names of the following gentlemen, who, either from the official situations they have held, or their long residence in the East, may be able to afford much local information:—

Mr. Samuel Briggs, of London, for some years Levant Company's consul at Alexandria.

Mr. Edward Hayes, son of a former consul at Smyrna (before Mr. Werry), a respectable merchant at Smyrna, at present at Bath.

Mr. Niven Kerr, merchant for many years at Constantinople, now residing in London.

M. Thomas Nixon Black, now of London, late a respectable merchant in Constantinople.

Mr. William Maltass, of Winchester House, Winchester-street, late a respectable merchant in Smyrna.

Mr. Liddle, secretary to the late Levant Company, might be able to add to the above list.

I now beg to refer to a letter on consular jurisdiction, addressed by the solicitors of the Levant Company to Mr. Liddle, then secretary, dated June 8, 1812.

It appears here that consuls have no power to decide between a British subject and a foreigner. His authority is, however, indispensable, in the present state of our own and general European relations with the Ottoman Empire. This point of consular jurisdiction appears to be of paramount importance, and the subject has been treated by me in my despatch, No. 7, Consular, of May 15, 1833, and to which I beg leave to refer.

The French ordonnances are generally adhered to, as the authority of consuls in the Levant; and I am given to understand, that the Sardinian government, which has been the last to establish consuls in the Levant, has defined in a very clear manner the nature and extent of their jurisdiction. I do not possess these documents, but they might, perhaps, be usefully consulted in framing the regulations now under consideration.

Cairo, February 28, 1835.

(Signed) PAT. CAMPBELL.

Sir,

Chief Secretary's Office, Malta, October 15, 1830.

I AM directed by the Lieutenant-Governor to acknowledge the receipt of your letter, addressed to his Excellency, under date the 26th of August last, transmitting certain written evidence in the case of Giuseppe Camilleri, a Maltese, accused of a crime, for the commission of which you state, that it was in the power of the Viceroy, by the tenor of our treaties with the Ottoman Porte, to have brought him to trial in Egypt; but that you had, though with the greatest difficulty, prevailed on his Highness to desist from the determination so to do, and to consent that you should send the accused to Malta, on condition, however, that he should here be punished with all legal severity.

It is much to be regretted, that his Highness the Viceroy should have been given to understand that the accused party could possibly be brought to punishment, on the written evidence transmitted by you, or, indeed, on any written evidence whatsoever; far from this being the case, no person can, by the laws of this island, be brought to trial but on *ried voce* evidence, and his Excellency cannot help regretting that you seem not to have been aware of this circumstance.

The man is still in quarantine, and will, on being admitted to pratique, be sent to prison; but, under the circumstances above stated, he must be ultimately liberated, without that punishment which the enormity of his crime, if guilty, so loudly calls for.

I have, &c.,

(Signed)

John Barker, Esq.,
His Majesty's Consul-General for Egypt,
&c., &c., &c.

FREDERICK HANKEY,
Chief Secretary to Government.

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FURTHER PAPERS

RESPECTING THE

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(1.)—REPORT *from His Majesty's Consul-General at Constantinople, on the Consular Jurisdiction in the Levant.*

IN reporting the practice observed by me in judicial proceedings, it may be necessary occasionally to repeat, or observe upon passages of my former Report of October, 1825, and of the "Instructions" prepared by me in September, 1829, for the guidance of His Majesty's Consul at Smyrna.

The "Instructions" relate to jurisdiction in differences between British subjects; in those between British and foreign subjects not Ottoman; and finally between British and Ottoman subjects.

The same practice is probably observed in those matters at the several British consulates in the out-ports, but a different mode of proceeding has prevailed at Constantinople, in suits between British and foreign subjects, in consequence, perhaps, of the European governments not having established Consuls at Constantinople, with the exception of Great Britain, where the establishment of a Consul-General dates from the year 1805.

It would appear also that the Consuls at the out-ports are permitted to exercise greater authority in cases of differences with Ottoman subjects, than the legations can claim the exercise of here, the Russian legation excepted.

It may be supposed that the Ottoman authorities are naturally more jealous of their rights at the seat of government, than they may be in the provinces.

I shall therefore state the practice observed here in the three divisions of proceedings above stated.

The French and Venetians having made the first commercial establishments in Turkey, it is probable that the mode of proceeding in judicial affairs prevailing at the several consulates in Turkey, have been adopted in imitation of those prescribed by the French and Venetian governments, or, with some, have had a common origin in their analogy with the local commercial courts which existed in most of the ports of the Mediterranean, composed of merchants, who, during the exercise of their temporary functions, were designated Consuls.

A French Consul in Turkey is but the president of the court, and has no vote in its decisions, except when the two commissioners, whom he is authorized by the "ordonnances" of his government to select, differ in opinion; he has then the casting vote.

The practice of choosing assessors appears to have obtained, with some of the British Consuls, but as the charter does not invest with authority others than the Am-

bassadors and Consuls, and as the Levant Company had not delegated authority to assessors in their bye-laws, I considered it necessary to warn the Smyrna Consul in the "Instructions," that the judicial authority, as well as responsibility, were with the Consul, and not with the assessors, whom he might consider it necessary to call to his assistance.

It may be considered that the practice of proceeding in differences between suitors of different nations, upon the principle that the plaintiff should follow the court of the defendant, was generally observed at the consulates in the provinces, long before it was completely admitted at the capital.

There having been no Consuls here from the European governments, the Ambassadors or chiefs of the several legations who had to interfere for the settlement of differences between the subjects of their respective governments, encouraged a resort to arbitrations, or agreed in the nomination of mixed commissions, each legation naming an equal number of commissioners.

This practice partially prevailed until the year 1817, when the present mode of proceeding was adopted by the tacit consent of the several legations. The Russian legation was the first to propose a departure from mixed commissions, and in the year 1814 the French chargé d'affaires protested against the pretension of the Russian authority, with reference to a claim then existing, though the change effected in the year 1817 was proposed by the French Ambassador, the Marquis de Rivière.

It would have been preferable, perhaps, to have formed courts similar to those before alluded to, existing in France and Spain, consisting of merchants of different nations, presided by members of the several legations, holding weekly sittings, to hear and decide upon suits, according to some law framed or chosen for a common rule. But there is much reason to apprehend that the Russian legation would not have consented to an approach to any thing of the nature of a Hanse corporation.

In accordance with the principle now admitted in proceedings for the settlement of differences between subjects of different states, it is the national law of the defendant in the cause that governs, though it may probably be admitted that the English Consuls have sometimes found it necessary or convenient to assimilate their proceedings to those of their foreign colleagues, and may not always have decided according to English law.

The several factories, or assemblies of merchants settled in the ports of the Levant, having each preserved an immiscible character, appear to form so many distinct colonies, of which the chiefs of the legations at Constantinople may be considered the governors, and as the policy of some governments has induced them to direct their agents to assume as much authority as possible from the stipulations existing with the Porte, the agents of other governments may also have been led to form an exaggerated estimate of their own authority.

The charter granted to the late Levant Company, giving authority to "govern," as well as to "administer full, speedy, and expedite justice" to the Company's trustees and agents in the Levant, the English Consuls may have inferred that their authority was equal to that exercised by their foreign colleagues.

Civil Jurisdiction.

Differences between persons subject exclusively to British jurisdiction.

In these differences I have generally proceeded in the manner recommended in the "Instructions" addressed to the Smyrna consulate.

In many cases I have urged the parties to submit their differences to arbitration, and in those which appeared more particularly to require that mode of settlement, I have occasionally, when it has been declined, named two assessors, one designated by each of the litigants, authorizing them to examine the claim set forth and to report thereon collectively or separately, in writing, or verbally at a subsequent meeting at which I presided, and decided on the case after hearing the parties with the assessors.

The Ionians often decline a reference to arbitration from apprehension of an improper exercise of the power granted to the umpire.

I have generally been assisted by assessors, always where the usage of trade was necessarily to be consulted, or where there was complication of accounts.

In cases of minor importance I have decided alone, by decree, after examining the documents presented and hearing the parties. Other cases I have of late referred to the Vice-Consul for amicable adjustment. Differences between masters of ships and their crews are naturally in his department.

In differences between British merchants I have generally addressed my opinion to them in epistolary form, which has always been conformed to. When they act for others under a power of attorney they would of course require for their own justification a positive decision or sentence.

My decisions have, in almost every case, been according to English law, according to the best of my judgment.

The questions which have required most attention have related to *claims on vessels, and masters of ships, protested bills, bankruptcies, attachments on property, or sequestrations.*

The first, *claims against vessels*, has occasionally created much anxiety when it has been attempted to render the ship responsible for the acts of the master, and to detain

a vessel, arising from any doubts when the law authorized an immediate recourse against it*.

Protested bills. The neglect or laches of the holders of bills, want of notice of protest, &c., have also required much consideration. Three years ago I had to decide in a case where much stress was laid on the absence of the necessity to give notice of protested bills to the drawers of them, and legal opinions were procured from London, but as it often happens, the case was differently stated by both parties, and not quite correctly by either. I decided for the necessity of the notice, and released the drawer from responsibility; my sentence was, I have reason to believe, submitted to the consideration of the gentleman consulted in London by the succumbing party, and though notice of appeal had been given, it was not pursued.

Experience has served to convince me that the necessity of giving "notice" should never have been dispensed with.

In bankruptcies, I have guided myself as far as circumstances would allow by the "Laws and Regulations for proceedings in matters of Bankruptcy," published in Malta, the 1st of November, 1815. I have considered myself the de facto commissioner, and having appointed provisional trustees, in due time assignees have been chosen by the creditors.

Compositions have generally been effected, otherwise I have given a release to the bankrupt on receiving a certificate containing the requisite number of signatures with amount of debt, attending latterly, in that respect, to the 122nd section of the Consolidating Bankrupt Act.

In failures of shopkeepers or other small traders, provisional trustees have been dispensed with. The property having been taken care of by the Cancellaria at the request of the creditors, has been made over under an inventory to the assignees afterwards named by them.

Sequestrations are permitted by the foreign authorities here with too much facility, on the consideration that if the claimant give security for the amount sequestered, the person in whose hands he attaches property may consider the attachment binding.

When an attachment is notified I consider myself called upon to communicate the demand to the third party, and wait for an application from one of the parties before I interfere to confirm or dissolve the sequester.

When application is made to confirm a sequester I have found it expedient to regulate my proceedings rather by French than by English law.

In England a creditor appears to have greater facilities for seizing the person than the property of his debtor. The French law facilitates the latter mode of proceeding, which various considerations recommend for adoption in this country. The want of proper places to serve as prisons, the inhumanity of placing debtors in Turkish prisons in seasons of plague, and the expense attending arrests at their houses, when that mode would be feasible, need only be mentioned.

I know not if there is any English treatise on the subject of attachments of property, or sequestrations, but I have not met with any authority for them before a judgment has been obtained against the debtor, when a seizure in execution may, I believe, be resorted to.

By the French code "saisies-arêts ou oppositions," may precede the "saisies-exécutions."

A creditor on presenting a title in proof of debt to the judge of the district, or on satisfying him of the existence of a claim, can obtain an attachment in property equal to the amount of it, and after judgment is given, claim execution of it on the arrested property.

I have considered that after a summary examination of a claim and being satisfied that a debt existed, I might authorize a sequester on property to the amount of it, though I was not prepared to give immediate judgment on the claim.

* Claims are often made against the former, for which the claimant pretends to hold his vessel responsible; for non-delivery of goods shipped, loss from bad stowage of goods, running foul of other vessels and causing damage, debts for account of the vessel, deviation from the course of the voyage, &c.

Vessels are also directly proceeded against for debts on *Bottomry Bonds*, but claims of this nature have very seldom been presented against English vessels. In all the claims above described, the arrest of the vessel has been applied for.

Ionian vessels and those belonging to the island of Malta, are frequently subject to claims for debt.

The Ionian Navigation Act allows the owner to mortgage his vessel, and directs him to cause a register to be kept on board, in which are entered the particulars of the sums borrowed. The register serves to prove the privilege of the first mortgagee to priority of payment, on the sale of the vessel; that privilege is, however, subordinate to those accorded to sums advanced for absolute wants in securing the safety of the vessel in the last voyage.

As there have been generally foreign claimants in these cases, they have consequently been almost always submitted to commissions, which have been guided by the French code in settling the distribution of the proceeds of the sale among the creditors, according to the different degrees of privilege.

The vessel having been previously arrested, on the demand of a creditor, has been sold, when the debt was not satisfied, at public auction, under my decree.

If a vessel were to cause damage to another at sea, in the Archipelago, or the Black Sea, a complaint would be lodged on their arrival here by one or both of the masters.

In cases of this kind, where there has been a cargo on board the vessel, and that it was in transit through this channel to another port, I have refused to interfere, further than to note on the ship's papers that there was a claim against it, stating its nature.

Independent of the considerations already stated, it may be acknowledged to be necessary to allow such facilities in a place where there is constantly a number of persons engaged in commercial transactions who are not permanently fixed or established.

Differences between *Partners* I have strongly insisted on referring to arbitration.

Suits between British and Foreign Subjects, not Ottoman.

Differences between British and other European subjects are invariably submitted to commissions composed of merchants and appointed by the protecting authority of the defendant in the suit.

That of the plaintiff designates one commissioner, who is accepted and named with two commissioners chosen by the presiding authority.

Well-founded objections against them from either of the parties are attended to.

When there are claimants of different nations, which frequently happens in suits regarding vessels sold for the benefit of creditors and the payment of bottomry bonds, one or more commissioners are added to represent the most important of the additional claims when it can be conveniently effected.

In bankruptcy cases if the foreign creditor were not to admit my decision as commissioner on his claim, I consider that he might apply for the appointment of a commission to try it.

A majority of votes decides. The dissenting commissioners may state in the sentence their opinion.

The sentences of commissioners are decreed for execution by the authority which appointed the commissioners.

These commissions, (British) being courts of first instance, the appointment has been decreed by me.

In British commissions, that is say, when the defendant being a British subject, the commissioners have been named by the British authority, as some of them are frequently foreigners, particularly when the defendant is an Ionian, and then all may be so, it is not to be expected that their decision will always be in conformity to English law or practice.

I have nevertheless considered myself bound to decree the execution of the sentence; if it were appealed against, it would necessarily be reformed by English law.

Commissions are appointed upon a request from the plaintiff to that effect communicated through the channel of his own protecting authority.

The Porte having allowed the exercise of jurisdiction in such cases by the different legations, the British authorities have considered themselves competent upon that request to assume it.

This practice commenced long before the dissolution of the Levant Company, and has continued to be observed.

Differences between British and Ottoman Subjects.

The 24th Article of the Capitulations relates to lawsuits between British and Ottoman subjects, and provides for the intervention of the Ambassador or Consul at the trial, though it does not appear to convey to them the right of participating in the decision, which the 42nd Article does in criminal cases.

The English party has always the assistance, on such occasions, of one of the interpreters of His Majesty's embassy, who represents the Ambassador or the Consul.

The Mussulman law governs all the subjects of the Sultan indiscriminately in differences between each other, and whatever degree of authority may be granted to the heads of the different Christian communities existing in the empire over the members of them, their decisions and those of their delegates may be successfully resisted by appeal to the Mahometan law.

The Greek may cite his fellow Greek to the *Mehkemé* in opposition to a decision of the Patriarchate in civil suits.

The Capitulations allow to British subjects the right of claiming to be judged at the Court of the Grand Vizir, where it is supposed that the influence of the Ambassador may guard him against the effects of the venal practices to which he might be exposed in the lower courts.

The late Levant Company attempted to procure some additional articles to the Capitulations to provide for settlement, by arbitration, of differences in commercial matters between British and Ottoman subjects. Sir Robert Liston was authorized by His Majesty's Government, in the year 1819, to assist in obtaining the concession, and I was directed by the Company to defray the charge for presents that it might have been considered proper to make to the Ottoman Ministers on the occasion. But the Ottoman Ministers stated, unequivocally, the impossibility of acceding to the proposal.

A mode of proceeding in such matters had previously commenced, which has since been much observed, that, however imperfect in itself and open to objections, has served to place the settlement of commercial differences, to a certain degree, in the hands of the commercial body.

The Porte refers commercial differences to the examination of the head "*Doganier*." The proceedings are as follows:—

The head customer collects a number of merchants of different nations, who meet at his office on a fixed day, when they hear the parties in the cause, appointing a second day for a final hearing of it if necessary.

An "*Ilam*" or report is then transmitted to the Porte by the *Doganier*, which is supposed to contain the opinion or decision of the majority of the assembled merchants.

These opinions are understood to be according to commercial law and usage, and as the French commercial code is more generally consulted by foreign merchants, its rules may be considered as being observed on such occasions.

When the *Doganier's* "*Ilam*" has been communicated to the Frank party, it has occasionally been found to represent incorrectly the opinions of the merchants, and at the same time to contain representations of his own condemnatory of the Frank.

Here lies the imperfection of the proceeding at the *Doganier's* court, to obviate which as much as possible the Frank merchants have of late stated in writing their opinions, to which the respectable Ottoman Christian merchants have subscribed, when there was no apprehension of the Turkish President, the *Doganier*, being displeased at their acquiescence.

This decision or opinion is generally submitted to, but there is no doubt that a Mussulman might at first refuse to appear before the *Doganier*, and could always appeal from his "*Ilam*" to the Law.

It has happened that Ottoman Christians have been permitted to carry their appeal against it to the Grand Vizir's court, where, however, it might generally be expected that the "*Ilam*" would be confirmed.

English subjects might also appeal from it in virtue of the 24th Article of the Capitulations, which allows them access to the Grand Vizir's court, and is part of their law.

The British authorities would be applied to for enforcing execution of the "*Ilam*," and they would feel themselves bound to support the appeal. Such appeals have not occurred, probably from the prevailing conviction that the "*Ilam*" would be confirmed by the Vizir.

After that confirmation the British authorities would have no cause for objecting to the decision, and if they did not execute it the Ottoman authorities would.

Appeal.

At Constantinople eight days is the shortest term allowed by the foreign authorities for giving notice of appeal. I have considered that if the appeal was not intimated on the 14th day after the communication of the sentence, I was authorized to proceed to the final execution of it. In case of appeal a provisional execution has always been required.

In appeals from consular decisions I have confirmed or reformed them, sometimes with, oftener without, assessors, both in suits exclusively British and mixed suits. As the appeals to France and Russia in mixed suits admit of no intervention on the part of the protecting authority of the foreign appellant or appellee, I have considered we might also proceed exclusively in them.

In appeals against my own sentences or decrees, I defend them by explaining in a more detailed manner the considerations declared in the sentence, and by exposing the errors of the appellant's objections when they exist. His Excellency the Ambassador then decides according to his own judgment.

Appeals from the decisions of French, Russian, Sardinian, and some other commissions are carried to courts in those countries.

The Austrian legation names a commission of revision, after which a commission of appeal may I believe be applied for. That legation has not yet published the rule by which it is guided in appeals.

In appeals from British commissions, two new members are added to the commission which is authorized to examine and report, not to decide, upon the objections of the appellant. I examine the report and submit my own opinion on the appeal to the Ambassador, who then decides thereon.

Execution of Sentence.

It has already been stated that sentences, though appealed from, must be provisionally executed. They have been executed in the manner recommended in the "Instructions" addressed to the Smyrna consulate, by deposit of the amount, satisfactory security, or arrest of debtor: recourse to the latter mode has very rarely been found necessary.

When sentences in appeal from my decisions in first instance are notified, I direct the execution of them. When attachments, or deposits of property, have been effected during the suits, I order execution upon them. It has very seldom been necessary to arrest debtors: when it has occurred, the obstinate and ill-intentioned debtor has soon relented, and the creditor, when he has been satisfied of the poverty of his debtor, has consented to his release to avoid the expense of imprisonment.

From the preceding statement it will appear that the Levant Consuls have exercised authority in the several matters referred to them, and it may be added that the interests of the King's subjects, residing or frequenting the ports of Turkey, require that they should so interfere, in order to avoid the inconvenience and injury which would result from an appeal to the tribunals of the country.

The charter granted to the late Levant Company appears to provide only for the settlement of differences between "merchants" of the Company and others (merchants?) not of the Company in "plaints begun and to be begun" at the places indicated, and allows also the Consuls to exercise lawful authority in "all and all manner of questions, discords, and strifes among them," and to execute all things prescribed and appointed by the Company, &c.

The Consuls have, however, exercised authority beyond those limits, considering, perhaps, that they were competent to proceed in jurisdiction so far as the Turkish capitulations permitted them.

They have judged in questions, originating in other countries, not in Turkey, between the King's subjects, not merchants, and between British and foreign subjects; they are expected to supply the place of all our courts of law; claims which in England would appertain exclusively to the Court of Admiralty, may be brought before them. As the agents in the Levant of some governments appear to have an extreme authority, equal to the cognizance of suits of every kind, an equivalent exercise of authority is expected in return from others.

The necessity of defining and fixing the extent of the authority of our Consuls is manifest.

A code of procedure, or fixed rules for proceedings, is, no doubt, requisite, but it may also be useful to do something to facilitate their interpretation of the law, for it is to be apprehended that their intended decisions in equity have sometimes been contrary to law.

The various English treatises on parts of commercial law, are not so intelligible to the common reader, as to the legal student. French Consuls have facilities in this respect, from the classification of their national codes.

If it might not be practicable to draw up a set of rules similar to the articles of the French code, in accordance with English law, for application to all cases, a brief and familiar compendium of commercial law would assist the Consuls in applying those rules which might be made, and in their reference to the works published on the several parts of law, which are often perplexing, from the quotations of opposite decisions of our Judges, without always stating that which has overruled. Those treatises are in the hands of most of our merchants. Legal opinions are, as before stated, applied for to England, and even foreign practitioners here sometimes quote from Chitty and other writers.

I have purposely adverted to the law of bills of exchange, with reference to "notices of protests," in which it is desirable that a positive rule were prescribed. The same observation may apply to other questions in which it might be useful to limit the law by rules.

I consider that in *bankruptcies*, "the laws for regulating, &c.," published in Malta, to which I have alluded, might with some curtailments and changes, perhaps called for by the new Act, (Consolidating Bankrupt Act,) be rendered applicable to the Levant, leaving to the Consuls the means of dispensing with the nomination of provisional trustees, when, in failures of little importance, it may appear convenient to proceed at once to the election of assignees. The Consul, through the Cancellier, might place under seal, in all cases, the property of the bankrupt, to be made over to the provisional trustees, or to the assignees, as it might be.

The Consul would have to declare the failure, on a petition from creditors, after examination of the statement. The 4th chapter of the regulations might be his rule, in relation to transfers of property after an act of bankruptcy.

Arbitrations.—It is desirable that the mode of proceeding of the umpire were precisely fixed; some of the rules of the French code might be adopted.

In partnership concerns, arbitration is certainly the most desirable mode of settling differences between the partners. The French code renders it obligatory. It is not perhaps to be apprehended that arbitration would often be declined by the partners. If it should happen, the Consul might be authorized to name two commissioners, reserving the casting vote to himself, if a difference existed between them. The sentence might be without appeal. The commissioners might appoint persons to elucidate accounts of the partnership, the charge for them to be defrayed by the party declining submission to arbitration.

Sequestrations.—The authority granted by the French code, "Saisies-arrets ou oppositions," might be usefully extended to the Levant Consuls, who might be empowered to authorize attachments, after the exhibition of a proof of debt, or on the shewing of a well-founded claim, when the person against whom it exists is not a fixed resident; the amount to be attached to be fixed by the Consul in both cases.

Stoppage in transitu.—It is desirable that "constructive possession" were well defined, or limited by some rules. The articles of the French code, under the head, "Revendication," might be rendered adaptable to the Levant, placing those affecting property in the possession of bankrupts in accordance with the regulations to be made in cases of bankruptcy.

Claims against Vessels.—The practice observed here in these cases has been stated, and it may be considered that many of the articles of the French commercial code, under the heads "Navires et Batimens," and "de la Saisie et Vente des Navires," might be usefully applied to the Levant.

Proceedings in Consular Courts.

It may be useful to fix rules for as speedy a termination of the suits as can be effected consistently with the ends of justice, but much must be left to the Consul in that respect.

The Consuls might be authorized to decide summarily in claims of small amount, after the hearing of the parties; on a consideration of the value of money, the sum might not exceed 5*l.* sterling.

It is proposed, that after the first memorial is presented by the claimant, each party may produce two, before the Consul can be competent to declare the pleading closed. The Consul may afterwards, so soon as he considers it convenient, call upon the plaintiff to produce his final statement, to be communicated to the defendant, whose reply thereto would be communicated to his adversary.

The Consuls may be authorized to fix in their courts the delay allowed for answering to writings during the pleadings, observing the most convenient term used at his place of residence by other Consuls. It may be difficult to establish a general rule in this respect applicable to every consulate.

There is no fixed rule in this consulate, but the suitors are given to consider that they must present their answers as early as possible; and there is perhaps less delay than in other courts, where the suitor, considering that he may defer his reply until the expiration of the prescribed term, generally waits for it.

Consuls might have authority to issue a subpoena to witnesses, and fines for not appearing might be fixed. It may perhaps be expected that none but turbulent Englishmen would object to appear when requested. Ionians have sometimes objected, from religious scruples, which have been satisfied by a priest of their own church, before whom the oath is generally administered. Ignorant Ionians often consider that making an oath is offending against the commandments.

After receiving the memorials closing the pleading, the Consul should fix an early day for hearing the parties, and deciding between them.

Assessors.—It would perhaps produce inconvenience, if the character of judge or Consul were given to them. I do not consider that our merchants would desire to be judged by each other. The practice of the French consular courts has not served to induce them to wish for a change in the mode of proceeding.

According to the present practice of this consulate, they are not judges nor jurors, for they have no vote. Their assistance and advice are applied for when the Consul may consider that their experience in the usage of trade may be useful; their attendance is voluntary and gratuitous; if it were rendered compulsory, remuneration would be expected. It may be advisable to let it remain as it is, voluntary. A respected Consul will always find the respectable members of the mercantile community over which he presides, willing to assist him.

Appeal.—The "Report" of October, 1825, and the "Instructions" of 1829, treat on appeals. With reference to the Report of 1825, the 9th paragraph appears to require explanation. The Vice-Consuls or agents therein alluded to, are those who are in the immediate neighbourhood of the Consul, some of whom are appointed by him as agents; Mitilene, Scala Nova, Samos, Scio, were more particularly referred to, who ought to report to the Consul at Smyrna, the progress of their proceedings in suits or differences which are not of a trifling nature, so that the Consul might advise and direct them in their proceedings; and in cases of great importance, stranding of vessels, &c., proceed in person to superintend them, if it appeared necessary. Their execution of decisions should be strictly provisional. The term of fourteen days might be allowed for giving notice of appeal, and another term, according to the distance of the parties from the court of appeal, for prosecuting it, which need not exceed two months for Turkey. A longer term should be allowed in claims from England, in which the claimant is represented by an agent, who might give notice of appeal in the usual time, and wait for authority from his principal to prosecute it; four months might then be allowed.

The Consuls have occasionally made interlocutory decrees on incidents of the suit, during the pleadings, and it has been expected that they should not be appealed from until the definitive judgment was given. When such decrees are preparatory, or are of a conservative nature, those ordering surveys of property, and the sale of that which is of a perishable nature, they need not be subject to appeal, nor would such an appeal be entertained. But interlocutory decrees on incidents of the suit may often serve to prejudice the principal matter of it. Such decrees might be subject to appeal, and I do not consider that the progress of the suit need always be retarded by the appeal on the incident.

Execution of Sentence.—Former reports relate to provisional execution of the sentence in first instance, and the practice observed here in executing those of first and second instance, has been stated.

In France there is no appeal from the sentence of a commercial court, when the

principal claimed is not above one thousand francs. This rule might be observed at the principal consulates, but perhaps not at all. The Consul might, in such suits, proceed more summarily than in those of greater importance, and thereby prevent the costs becoming excessive. Investing the Consuls with greater authority against the property of debtors, would tend much to obviate the necessity of arresting their persons.

If there was no appearance of fraud in the conduct of the debtor, the expenses of his imprisonment should always be at the charge of the prosecutor, and a release subsequently granted under some well explained provisions of the Insolvent Act, if the creditor did not in the mean time compound with his debtor.

As the Ionians who resort to the Levant for the purposes of trade are generally possessed of property in their islands, which is out of the reach of Levant courts, some understanding might possibly be effected with the Ionian government for facilitating a recourse against it to creditors in virtue of Levant consular decisions.

Criminal Jurisdiction.

The 42nd Article of the Capitulations grants to the Ambassador and Consuls the right of interference when British subjects are tried for criminal offences, and to "hear and decide" together with the Turkish judge.

The 10th Article establishes the right of the Ambassador to decide in cases of calumny.

Both articles relate, no doubt, to causes in which the accusers are Ottoman subjects, for though there be no article in our Capitulations respecting criminal acts committed by British subjects against each other, yet as the French and Russian treaties clearly provide for such cases, and for the exercise of jurisdiction therein by their Ambassadors and Consuls, the privilege has been considered common to the several legations accredited at the Porte, and criminal accusations from subjects of the European governments are submitted to the protecting authority of the accused party, according to the principle observed in civil jurisdiction, but there is not, in the examination of the complaint, any intervention on the part of the protecting authority of the accuser.

The Consuls at the outports have also had to interfere in criminal cases when the accusing party has been Ottoman, as well as in those where the parties were British, or British subjects and those of other European governments.

The Consuls appear to exercise, at present, a greater degree of authority in police over the subjects of their respective governments, than is allowed to the foreign authorities at the capital, the Russian legation always excepted.

The Porte first made objections to the interference of the legations in police matters in the year 1818 and 1819, upon the occasion of an arrest which was effected by the French and British authorities, collectively, of a band of thieves and vagabonds of various nations, concerning whose proceedings information had been given to the French embassy. The Russian legation having protested strongly against the pretensions there set forth by the Porte, and all the other legations having remonstrated in more moderate terms, the foreign authorities continued to proceed unmolested as they had before done.

When the accusers were not Ottoman the case was left exclusively to the foreign authorities which it concerned, the Turkish police officers always assisting them in their proceedings when applied to, and permitting the arrested persons to be lodged in their prisons.

When Franks were arrested on the accusation of Ottoman subjects, notice of the arrest was immediately given to their protecting authorities, to whom the accused persons, when claimed, were delivered up, on an understanding that they would be forthcoming for trial, at which the interpreters assisted to represent the chiefs of the protecting legations.

Soon after the publication of the treaty of Adrianople, the Porte published police regulations, and I believe communicated them to the several legations, with the exception it may be supposed of that of Russia, for as they were declared to be generally applicable, the declaration would have been considered a contravention of the 7th Article of that treaty, which places Russian subjects under the exclusive jurisdiction of their Minister and Consuls.

I know not if any notice was taken of the notification by the several foreign ministers. It is probable that the Porte was left to suppose, from their silence, that the regulations were not considered by them as applicable to foreign subjects, unless they were enforced in conjunction with their protecting authorities.

The Porte has, however, proceeded gradually to establish an almost exclusive exercise of police in matters regarding foreign subjects not Russian, and it may be added that the manner in which the Turkish authorities have proceeded on most occasions has tended to justify with the public the exaction by Russia of the extent of jurisdiction stipulated in the treaty of Adrianople.

The practice formerly observed with the British authorities in matters of police is no longer attended to, and we cannot be said to be in the full enjoyment of the privilege conferred by the 42nd Article of the Capitulations.

It would be endless to state the various instances which might be mentioned of the

irregular proceedings of the Turkish authorities in this respect. It may be only necessary to specify some of the most flagrant.

In the month of February, 1834, an Ionian, accused by an Austrian subject of having in his possession property stolen from him, was, on his application, arrested by a police officer and lodged in a Turkish prison. The Austrian then stated the case to me, and on sending to claim the arrested Ionian, the transfer of him to the consulate was refused, nor was he surrendered to the British dragoman until after a summary examination of the case by the Capitan Pasha, by whose order the bastinado was inflicted with such severity, that the Ionian remained lame for several weeks. In this case the Pasha had no jurisdiction, for the parties were foreigners. If he considered that he had jurisdiction, he should have attended to the 42nd Article of the Capitulations. The dragoman was not present at the examination, and he did not know that the prisoner had been punished until he was delivered over to him.

In the month of July following, two natives of Malta, father and son, of the name of Damata, were arrested and lodged in the prison of the Seraskier Pasha, on suspicion of having been concerned in robbing a Greek church. No notice was given by the Pasha to the British authorities of their imprisonment, but the men found means, after some days' detention, to make known their situation. It appeared that Damata and his son had been bastinadoed to extort confession, but they persisted in asserting their innocence;—their liberation was not obtained until some weeks afterwards. There was no doubt of their innocence.

In the month of August last, an Ionian captain having been insulted by some Turkish soldiers at a village on the Bosphorus, he caused one of them to be arrested by the police guards, who having taken him to the station, both parties were sent by the commanding officer to the habitation of the Achmet Pasha, who commanded in that district of the Bosphorus, by whose kehaya, or agent, the complaint was examined. The soldier confessed that he had maltreated the Ionian, but stated in his own justification, that language had been addressed to him, which, as a Mussulman, he was bound to resent. The Ionian was bastinadoed by order of the kehaya, though he declared that he was a British protected person. Upon enquiry it resulted that not the least blame was imputable to the Ionian, who is known as a peaceable person, and is generally respected. He never obtained any degree of satisfaction for the ill-treatment he complained of.

It appears, therefore, that while the Russian legation has an extended exercise of jurisdiction, the Porte is endeavouring to deprive the other legations of the enjoyment of those more moderate rights which were granted by ancient treaties.

A natural consequence of depriving them of such privileges will be the increase of Russian dependants in the Levant.

My interference in such cases may now be considered as limited to remonstrating against the irregular proceedings of the Turkish authorities.

In cases which have been brought before me, I have always reported the most important of them to His Majesty's embassy, and have acted upon its advice or instructions regarding them.

When an accusation is laid, I either send the parties to the Cancellaria for their depositions to be taken, or I interrogate them myself. I have always done so in cases which were to be submitted to the Ambassador, to whom I transmit, on such occasions, the depositions and interrogatories, explaining thereon, and submitting suggestions for the disposal of the case, as I do also in cases transmitted from the consulate. Grave cases have not been frequent. One occurred about two years ago, when a native of Malta was accused of having committed a robbery in one of the Roman Catholic churches of Pera, under Austrian protection; it was the second time that he was brought before me for robbing in churches. On the last occasion the evidence was strong against him, and he was, moreover, a man of bad character, having no known means of supporting himself. He was imprisoned for twelve months in the Bagnio, at the expiration of which term he was released, and he was warned that he would be left to the rigour of Turkish law on any future accusation.

A short time ago three Ionians were arrested at Smyrna, on an accusation of bar-ratry, committed three years ago. The principal of them was the owner and master of an Ionian vessel, that arrived here in the year 1832, from a port of Syria, which it was stated had been plundered, during the voyage, by the crew of a pirate boat, of sundry bags of money and bales of goods, shipped on board the vessel at Beirut.

The consignees of the money suspecting the truth of the captain's statement, requested that the crew should be examined respecting the circumstances of the voyage, which was done, but nothing was elicited to authorize proceedings against the captain. Two Ionian boatmen settled at Smyrna, having lately declared that the missing bales were carried to Smyrna in their boat from the Ionian vessel with the knowledge of the captain, he, his son, and another Ionian were arrested by order of Mr. Consul Brant, who having transmitted to me the depositions relating to the accusation, they were submitted to the consideration of the Ambassador, and his Excellency authorized the transfer to Corfu of the three Ionians for trial. The two boatmen have been sent with them.

In cases of assaults, as the aggressor has generally been arrested by the local police at the request of the complainant, a compromise has often been made between the parties, before my examination of the case was completed; and I have, on many occasions, recommended to the accused party to conciliate his accuser.

Certain cases which might, perhaps, strictly be termed robberies, I have considered as *undue appropriations* of property, and have treated them as civil actions.

Persons against whom other petty offences have been proved, have been punished by imprisonment for a short time, according to the nature of the offence. Since the destruction by fire of the building contiguous to the British palace, which served for a prison, this mode of punishment has seldom been resorted to, in order to avoid the necessity of making use of Turkish prisons.

Drunken sailors have often been arrested by the Turkish police guards, and I have authorized their detention until they were able to return peaceably to their ships.

I have also authorized a short imprisonment of turbulent seamen on complaints from their captains.

Feeling that the Consuls do not possess the requisite authority in criminal cases, I have, as it may be naturally expected, deemed it prudent to use power with as much moderation as possible, but I have considered it necessary not to allow offences to pass unnoticed, for experience has shown that the certainty of punishment, though slight, serves much to deter from a repetition of them.

That the Consuls should have a degree of authority granted to them for the cognizance of certain offences, and for their interference in others, appears to be absolutely necessary. The want of it is becoming more felt by them in consequence of the increasing resort to the Levant of the lowest classes of natives of the Ionian islands and Malta.

The same cause has, no doubt, occasioned an increase of official care to the Consuls of other nations.

It is much to be regretted that criminal cases of every kind could not be referred to Turkish courts, with the intervention of the foreign protecting authorities, according to tenor of the 42nd Article of the British Capitulations; but experience has unfortunately proved how little the Turkish authorities are to be confided in for a due observance of such stipulations, or for a moderate exercise of their own power where Christians are implicated. Russia might not, it may be apprehended, consent to such a compromise with her own exclusive rights, and if the arrangement were not general, it might be inexpedient, for other considerations, to adopt it.

It may therefore be considered necessary, for the present, that authority be given to the Consuls:—

To take cognizance of small offences and misdemeanors, and to punish the offenders by fine or imprisonment:

To send away from their districts to Malta or the Ionian islands, perverse offenders and vagabonds not having any apparent occupation or means of subsistence, unless they give satisfactory security for their future good conduct. To send to those islands persons accused of grave offences when the Consul is satisfied that guilt attaches to the accused party, making it incumbent on the Governments of the islands to which the prisoner may belong, to provide for the passage and expenses of witnesses to assist at his trial.

Those Governments might possibly be thereby induced to adopt measures for recalling from the Levant the numerous vagabonds who are now infesting the sea-ports of Turkey.

The consent of the Ambassador for the removal to Malta or Corfu of persons accused of grave crimes, should be applied for by the Consuls of Turkey. Those of Egypt and Syria, would represent the cases to His Majesty's Agent and Consul-General.

Constantinople,

(Signed)

JOHN CARTWRIGHT,

23rd December, 1835.

CONSUL-GENERAL.

(2.)—LETTER from the Secretary to the late Levant Company to Viscount Palmerston, on Consular Jurisdiction in the Levant.

My Lord,

Torrington, Devon, December 5, 1835.

In compliance with your Lordship's desire, conveyed to me by Mr. Fox Strangways, that I should forward to your Lordship any suggestions that I may have to offer as to what may be most expedient to be done for the better regulation and definition of the Civil and Criminal Jurisdiction of His Majesty's Consuls in the Levant, bearing in mind the probable effects of the surrender of the Levant Company's charter,—I have the honour to submit such opinions as are the result of the best consideration which I have been able to give to the subject.

Having for many years been the secretary of the Company, even down to the moment of its dissolution, I am aware that much more of useful suggestion may be expected from me than I am able to offer. Therefore, I pray your Lordship, in kindness, to consider, that during my time, I might say during the Company's time, not a tithe of the difficulties now presented, from the Levant, for your Lordship's notice, were presented for that of the Company.

And that, ever since the surrender of the charter, I have been retired from London, and from all connection with Turkey.

I doubt not that things are much changed.

Formerly, in the best days of the trade, I mean when, being in the hands of a few opulent merchants, it was not over-done, goods were sold, in compliance with standing orders of the Company, for ready money only, in Turkey, by the "Factors,"

who not being allowed to trade on their own account, were, literally, the servants of their principals at home: hence disputes were not heard of, and formal applications for consular interference must have been of most rare occurrence. Latterly, even British subjects settled in Turkey, being members of the Company, and sworn to be governed by its regulations,—I may add, knowing something more or less of what they were about, and of the difficulties they had to struggle with,—were so orderly, and so fortunate, that the legality of the power vested in the Consuls, acting as judges, to "fine," "imprison," and "send home," was never put to the test.

Now, every body goes to the Levant, and any body, so disposed, may, as it should seem, do wrong with impunity; a state of uncertainty which ought not to be permitted to continue.

I submit that the whole matter may be disposed of under these two heads,

Consular Jurisdiction.

Consular Instructions.

The draft of the Bill to be laid before Parliament proposes to enable His Majesty to make regulations touching the authority of the Consuls over British subjects. So far well: but might it not most usefully go further? I mean further than your Lordship (having the doubts of the law officers in view) may have thought that those regulations should go. And might it not, in order to obviate unnecessary alarm and discussion, be entitled a Bill to *Remove Doubts, &c.*, and among other things enact, that in consideration of the peculiar character of the people and government of Turkey and Egypt, which at all times has rendered it impossible to apply to their courts of justice for the decision of disputes arising between British subjects, His Majesty's Consuls be, when called upon, authorized to act as judges, as hitherto supposed to be, and in execution of their sentences, proceed to fine, imprison, or send home in custody such defaulters and delinquents as they may have had to deal with.

Limits to fines and imprisonment might be fixed.

An appeal to English law at Malta, from consular decisions in the Levant, as suggested by Consul-General Campbell, might be provided for.

Without unquestionable authority to enforce, the Consul cannot act usefully as a judge. He had better be quite silent.

But with such authority, published with the solemnity of an Act of Parliament, to those most likely to be restrained by it, I doubt not that he would be more rarely called upon to act judicially, inasmuch as litigious and fraudulent debtors, finding themselves, even in Turkey, to be within the reach of justice, might come into early, quiet submission.

Indeed, my Lord, there is no fact of which I am more convinced than this, that if you would make the best possible provision for the security, present and future, of British property in the Levant against the frauds of British swindlers, and prevent Turkey from becoming a sanctuary, not only for them, but for runaways of the like character from Britain, *you must strengthen the hands of your Consuls.*

Thus much for Civil jurisdiction. Criminal jurisdiction would need hardly to be noticed, if, as formerly, we were wholly British; but since the Maltese have become our fellow subjects, and the Ionians been protected as such, we have become, not unfrequently, *murderers* in Turkey, to the disgrace of our national character in the estimation of the people of the country. Effectual measures ought to be attempted for the purpose of restraining the ferocity of those people.

Some flagrant instances of murder, with impunity, have been reported to your Lordship.

Sir Robert Liston, on his return from his embassy in 1822, mentioned one, doubly atrocious, to me. He was very urgent with us to move His Majesty's Government on the subject. The late Lord Londonderry was spoken with; he perceived difficulties which he could not see his way through; he showed no inclination to stir; he did nothing.

Consular Instructions.

The grand desideratum of the Consuls, by which they hope to be directed in all possible cases, and to be shielded from responsibility.

Nevertheless, I would postpone the issue, even with the mass of suggestions in hand, which the gentlemen, whose opinion have been asked, will furnish.

My Lord, I cannot but look back to the administration of the Company, which was as simple as it was quiet, and of long duration. Knowing the impossibility of providing for every contingency, it never gave detailed codes of instructions; its policy was to avoid doing so; satisfied with a few plain, general rules, it left the application to the discretion and integrity of the Consuls; on their responsibility, which the Company considered the best security for the temperate administration of justice.

But I am told that the present times are not like those to which I have alluded. I admit they are not, and yet I cannot perceive any other material difference bearing upon this part of the question, than that the Consuls are more frequently called upon to act now, than formerly.

After all, my Lord, you need only legislate for extreme cases, probably even in these times, of rare occurrence, the Consul's every-day court, being, as Vice-Consul Brant very properly terms it, one of conciliation, rather than of formal justice.

But if your Lordship thinks there must be a code of instructions, without any hesitation I advise that Consul-General Cartwright be directed to consult all the foreign codes in use at Constantinople, and then to prepare and forward a draft of one adapted to our occasions, for your Lordship's consideration. In my opinion he is, beyond all comparison, the best qualified man that could anywhere be found for the execution of that duty.

In the mean time, not neglecting the Act of Parliament, which I would charge with all the graver matter, I would direct the old instructions and bye-laws of the Company, excepting of course such as become extinct with it, I should rather say except such as only related to the concerns of the corporation-consulages, treasurers, &c., to be the rule for the present. They are the rule, I perceive, but I think such direction would encourage the Consuls.

Thus it is that I would dispose of the whole matter.

I have the honour to be, with respect,

My Lord,

Your Lordship's most obedient, humble servant,

To the Right Honourable

The Viscount Palmerston, &c. &c. &c.

(Signed)

GEORGE LIDDELL.

(3.)—LETTER from Turkey Merchants on the Consular Jurisdiction in the Levant.

MY LORD,

London, 29th January, 1836.

We have carefully perused the documents submitted to us by your Lordship, respecting the powers exercised by British Consuls in the Levant.

It appears to us that the practice and defects of the present system have been ably developed in the several reports of the Consuls, who have judiciously adverted at the same time to the practice of other nations in the Levant, the like privileges being conceded by the Porte to all European States connected with Turkey by treaty. We have attentively weighed the remedies recommended in those reports to your Lordship's consideration, for the future regulation of the consular offices, and we are of opinion, upon a review of the whole subject, that the detailed suggestions of Mr. Consul-General Cartwright, coupled with those of Mr. Consul Brant, of Smyrna, and of Mr. Vice-Consul Brant, of Trebisonde, are, with modifications, well adapted for practice in the Levant, where the duties of Consuls are so widely different from those in any other country. In framing new regulations, this marked difference should constantly be borne in mind by jurisconsults. In all European states, British subjects are amenable to the laws of the country where they reside, and the jurisdiction of Consuls is extremely limited. But in the Ottoman dominions, British subjects are not amenable to the local government; they are placed by treaty under the British Consuls, in criminal as well as civil cases. Hence the anomalous and arduous duties of Consuls in the Levant, who are called on to exercise the functions of police magistrates and of judges, as well as being the protectors of the persons, the commerce, and shipping interests of His Majesty's subjects.

It is quite obvious that British law is totally inapplicable to the local circumstances of Turkey; but any modification that may be advisable, will be preferable to being subject to Turkish law; and all who reside in the Levant, though tenacious of the valuable privileges conceded by the Porte, are sensible of the necessity of a peculiar code of regulations for the government of His Majesty's subjects within the Ottoman dominions.

In reference to Mr. Consul Brant's suggestions, we beg leave to offer a few remarks:—

We are of opinion that it will tend to prevent much unnecessary litigation, if the Consul has power to decide, without appeal, all differences submitted to him under the value of £100—(one hundred pounds sterling.)

That in cases of bankruptcy, the value of personal effects to be retained by the bankrupt should be £20, instead of £5 sterling.

That no debtor shall be imprisoned for a less sum than £5 sterling.

That the power to imprison, in case of misdemeanor, should, in aggravated cases, extend beyond the period of three months.

That in criminal cases, we are also of opinion that the power of the Consul is too limited, and according to the present practice, great criminals may too easily escape punishment, the Consul's authority not extending beyond the infliction of imprisonment.

The sending of criminals to Malta for trial, has been shown to be useless (as the law now exists) in consequence of the difficulty of complying with the law there, *ried roce* evidence being alone received; and the courts may not feel themselves competent to take cognizance of offences committed in Turkey; but these obstacles are not insuperable.

In any alterations which His Majesty Government may intend to adopt with regard to the courts of Malta, we most respectfully offer to your Lordship's consideration, whether some regulation may not be made to meet the existing difficulty, as respects the trial of persons guilty of criminal acts in Turkey, which are beyond the authority of Consuls to punish. The suggestions of Lieutenant-Colonel Campbell, His Majesty's Agent and Consul-General in Egypt, appear entitled, on this point, to great weight.

We submit to your Lordship, that when *ried roce* evidence cannot be forwarded to Malta, that the Consul should be empowered to summon four or six respectable persons, to assist him in taking evidence, both for and against the prisoner, in his presence, which evidence to be on oath, and verified by the Consul and his assistants.

Acting in a measure like the grand jury here, they will determine as to the case being or not being of a nature to be tried by a higher tribunal; and in the event of their considering the party to be guilty, the proceedings, verified by the Consul, &c., as before stated, to accompany the prisoner to Malta, and be received by the courts as evidence; not, however, to the exclusion of any *ried roce* evidence which may subsequently be obtained. A clause enjoining ships of war bound to Malta to receive such criminals on board, to be delivered to the proper authorities in that island, would be highly expedient; and in default of such conveyances, the Consuls should possess the power of sending criminals by merchant vessels, on payment of a proper consideration.

The privilege which British subjects enjoy in Turkey, of being tried by their own Consuls, is too valuable in any case to forego; for once relinquished, it will not easily be recovered; and to deliver over any prisoner to the Turks, would be at once to determine his fate.

We have the honour, &c.,

(Signed)

S. BRIGGS.
N. WM. KERR.
WM. MALTASS.
WM. TOMLINSON.
JN. NICKOLS.
J. W. BODDINGTON.

Viscount Palmerston, G.C.B.